

In The  
**Supreme Court of the United States**  
 October Term, 1991

JUL 31 1991  
 OFFICE OF THE CLERK

EASTMAN KODAK COMPANY,

vs.

*Petitioner,*

IMAGE TECHNICAL SERVICES, INC., J-E-S-P CO., INC.; SHIELDS BUSINESS MACHINES, INC.; MICROGRAPHIC SERVICES, INC.; MICRO MAINTENANCE, INC.; ATLANTA GENERAL MICROFILM CO., INC.; ROGER KATONA, d/b/a G. & S. ELECTRONICS; AMTECH EQUIPMENT MAINTENANCE, INC.; ADVANCED SYSTEMS SERVICES, INC.; B.C.S. TECHNICAL SERVICES, INC.; BOB INGLE, INC.; DATA PROX EQUIPMENT CO.; FISHER MICROGRAPHICS, INC.; I.O.A. DATA CORP.; SEARLE ENTERPRISES, d/b/a MICRO IMAGE, INC.; MIDWEST MICROFILM EQUIPMENT & SERVICE, INC.; OMNI MICROGRAPHIC SERVICES, INC.; and CPO, LTD.,

*Respondents.*

On Writ Of Certiorari To The United States  
 Court Of Appeals For The Ninth Circuit

JOINT APPENDIX  
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**Petition For Certiorari Filed December 20, 1990  
 Certiorari Granted June 17, 1991**

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**Northern District of California**

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for the Ninth Circuit

| Docket Date       | Document            | Docket Reference |
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| November 10, 1988 | Brief of Appellee   |                  |

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| November 29, 1988  | Reply Brief of Appellants  |
| May 1, 1990        | Opinion of the Ninth Circuit Court of Appeals  |
| May 15, 1990       | Appellee's Petition for Rehearing and Suggestion for Rehearing En Banc   |
| May 15, 1990       | Brief Amicus Curiae of Digital Equipment Corporation, Hewlett-Packard Company and Wang Laboratories, Inc. In Support of Petition for Rehearing and Suggestion of Rehearing En Banc |
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| June 17, 1991      | Order of United States Supreme Court Granting Certiorari   |

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

|                                |   |                       |
|--------------------------------|---|-----------------------|
| IMAGE TECHNICAL                | ) | No. C 87 1686 WWS     |
| SERVICE, INC., a California    | ) |                       |
| corporation; J-E-S-P,          | ) | COMPLAINT FOR         |
| COMPANY, INC., a New           | ) | DAMAGES AND           |
| Jersey corporation; SHIELDS    | ) | INJUNCTIVE RELIEF     |
| BUSINESS MACHINES, INC.,       | ) |                       |
| a Pennsylvania corporation;    | ) | Tie-ins;              |
| MICROGRAPHIC SERVICES,         | ) | Monopolization;       |
| INC., a Missouri corporation;  | ) | Attempt to            |
| MICRO MAINTENANCE,             | ) | Monopolize;           |
| INC., an Illinois corporation; | ) | Combinations,         |
| ATLANTA GENERAL                | ) | Contracts, and        |
| MICROFILM, CO., INC., a        | ) | Conspiracies in       |
| Georgia corporation; ROGER     | ) | Restraint of Trade;   |
| KATONA d/b/a G.&S.             | ) | Pendent State Claims  |
| ELECTRONICS, a California      | ) | for Anti-competitive  |
| partnership; AMTECH            | ) | Acts; Breach of       |
| EQUIPMENT                      | ) | Contract; Breach of   |
| MAINTENANCE, INC., a           | ) | Covenant of Good      |
| Minnesota Corporation;         | ) | Faith and Fair        |
| ADVANCED SYSTEMS               | ) | Dealing; Interference |
| SERVICE, INC., a Colorado      | ) | with Contractual      |
| corporation; B.C.S. TECH-      | ) | Relationships and     |
| NICAL SERVICES, INC.,          | ) | Prospective Economic  |
| a Colorado corporation; BOB    | ) | Advantage; and        |
| INGLE, INC., a Missouri        | ) | Unfair Business       |
| corporation; DATA PROX         | ) | Practices             |
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| Missouri corporation; I.O.A. | ) | TRIAL           |
| DATA CORP., a New York       | ) |                 |
| corporation; SEARLE          | ) |                 |
| ENTERPRISES, INC., d/b/a/    | ) |                 |
| MICRO IMAGE, a Texas         | ) |                 |
| corporation; MIDWEST         | ) |                 |
| MICROFILM EQUIPMENT &        | ) |                 |
| SERVICE, INC., a Minnesota   | ) |                 |
| corporation; OMNI            | ) |                 |
| MICROGRAPHIC SERVICES,       | ) |                 |
| INC., a California           | ) |                 |
| corporation; and CPO, LTD.,  | ) |                 |
| a California corporation,    | ) |                 |
| Plaintiffs,                  | ) |                 |
| vs.                          | ) |                 |
| EASTMAN KODAK                | ) |                 |
| COMPANY,                     | ) |                 |
| a New Jersey corporation,    | ) |                 |
| Defendant.                   | ) |                 |

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Plaintiffs herein, demanding a trial by jury, allege as follows:

**FIRST CLAIM FOR RELIEF**  
**(All Plaintiffs)**

**(Tie-Ins - Sherman Act § 1, Clayton Act § 3)**

**Jurisdiction and Venue**

1. The jurisdiction of this court is invoked, and this action is instituted under the provisions of Section 1337 of Title 28, United States Code (28 U.S.C. § 1337) and Sections 4, 12, and 16 of the Clayton Act (15 U.S.C. §§ 15,

22 and 26) to declare the rights of plaintiffs, to prevent and restrain the unlawful acts of defendant, and to recover damages sustained by plaintiffs as a result of violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), violations of Section 3 of the Clayton Act (15 U.S.C. § 14), and violations of state laws.

**2. Defendant Eastman Kodak Company** (hereinafter "Kodak") has offices in the Northern District of California, and is qualified to do business in California. Kodak does a substantial amount of business in the Northern District of California, including substantial sales of Kodak micrographic and photocopy equipment and substantial repair, service and parts distribution for said equipment. Kodak, as hereinafter set forth, has intentionally violated Section 1 and Section 2 of the Sherman Act and Section 3 of the Clayton Act through acts which, in part, occurred in the Northern District of California and which have injured plaintiffs, and each of them, in their trade and business.

#### Description of Plaintiffs

**3. Plaintiff Image Technical Service, Inc.** (hereinafter "ITS") is a corporation organized and in good standing under the laws of the State of California and has its principal place of business in Sacramento, California.

**4. Plaintiff J-E-S-P, Company, Inc.,** (hereinafter "J-E-S-P") is a corporation organized and in good standing under the laws of the State of New Jersey and has its principal place of business in East Brunswick, New Jersey.

**5. Plaintiff Shields Business Machines, Inc.** (hereinafter "Shields"), is a corporation organized and in good standing under the laws of the State of Pennsylvania and has its principal place of business in Philadelphia, Pennsylvania.

**6. Plaintiff Micrographic Services, Inc.** (hereinafter "Micrographic Services") is a corporation organized and in good standing under the laws of the State of Missouri and has its principal place of business in Republic, Missouri.

**7. Plaintiff Micro Maintenance, Inc.** (hereinafter "Micro Maintenance") is a corporation organized and in good standing under the laws of the State of Illinois and has its principal place of business in Burbank, Illinois.

**8. Plaintiff Atlanta General Microfilm Co., Inc.** (hereinafter "Atlanta General") is a corporation organized and in good standing under the laws of the State of Georgia and has its principal place of business in Atlanta, Georgia.

**9. Plaintiff Roger Katona, d/b/a G.&S. Electronics** (hereinafter "G&S"), is a general partnership organized and in good standing under the laws of the State of California with its principal place of business in Chino, California.

**10. Plaintiff Amtec Equipment Maintenance, Inc.** (hereinafter "Amtec") is a corporation organized and in good standing under the laws of the State of Minnesota and has its principal place of business in St. Paul, Minnesota.

11. Plaintiff Advanced Systems Service, Inc. (hereinafter "Advanced") is a corporation organized and in good standing under the laws of the State of Colorado and has its principal place of business in Denver, Colorado.

12. Plaintiff B.C.S. Technical Services, Inc. (hereinafter "BCS") is a corporation organized and in good standing under the laws of the State of Colorado and has its principal place of business in Denver, Colorado.

13. Plaintiff Bob Ingle, Inc., (hereinafter "Ingle") is a corporation organized and in good standing under the laws of the State of Missouri and has its principal place of business in Excelsior Springs, Missouri.

14. Plaintiff Data Prox Equipment Co. (hereinafter "Data Prox") is a corporation organized and in good standing under the laws of the State of New Jersey, and has its principal place of business in Hillside, New Jersey.

15. Plaintiff Fisher Micrographics, Inc. (hereinafter "Fisher") is a corporation organized and in good standing under the laws of the State of Missouri, and has its principal place of business in St. Louis, Missouri.

16. Plaintiff I.O.A. Data Corp. (hereinafter "IOA") is a corporation organized and in good standing under the laws of the State of New York, and has its principal place of business in New York, New York.

17. Plaintiff Searle Enterprises, Inc. d/b/a Micro Image (hereinafter "Searle") is a corporation organized and in good standing under the laws of the State of Texas, and has its principal place of business in Spring, Texas.

18. Plaintiff Midwest Microfilm Equipment & Service, Inc. (hereinafter "Midwest") is a corporation organized and in good standing under the laws of the State of Minnesota and has its principal place of business in Golden Valley, Minnesota.

19. Plaintiff Omni Micrographic Services, Inc. (hereinafter "Omni") is a corporation organized and in good standing under the laws of the State of California and has its principal place of business in Milpitas, California.

20. Plaintiff CPO Ltd. (hereinafter "CPO") is a corporation organized and in good standing under the laws of the State of California and has its principal place of business in Santa Clara, California.

21. Plaintiffs are engaged in the trade and business of providing repairs and service for Kodak micrographic and photocopy equipment. Plaintiffs are also engaged in the trade and business of buying, reconditioning and selling used and reconditioned Kodak micrographic and photocopy equipment. At all times material to this action, plaintiffs were and are so engaged in said trades and businesses. Plaintiffs are in direct competition with Kodak in the bidding on, sale of and providing for repairs and service of Kodak micrographic and photocopy equipment and in the purchase and sale of used Kodak micrographic and photocopy equipment.

22. Plaintiffs purchase their parts, tools, test equipment, supplies, service manuals, and specifications for Kodak micrographic and photocopy equipment (hereinafter "parts") from Kodak. Said parts are produced and

sold in the several states. Plaintiffs sell repairs and service for Kodak micrographic and photocopy machines in the several states. Plaintiffs also purchase and sell used Kodak micrographic and photocopy equipment. Said micrographic and photocopy equipment is purchased and sold in the several states. Customers of plaintiffs who purchase used micrographic and photocopy equipment also purchase parts, repairs and service for said equipment from Kodak and others. Said parts, repairs and service are purchased and provided in the several states.

23. The availability of said Kodak parts is critical to plaintiffs in their businesses to recondition, sell, repair, and service Kodak micrographic and photocopy equipment. Without these parts plaintiffs cannot operate their businesses in competition with Kodak. Most parts for Kodak micrographic and photocopy equipment are distributed in the United States only by Kodak, and are manufactured by Kodak or by other entities solely for Kodak.

#### Description of Defendant

24. Defendant Kodak is a corporation duly organized and existing under the laws of the State of New Jersey and has its principal place of business in Rochester, New York. Kodak manufactures, markets, sells and distributes various photographic products. These products include micrographic and photocopy equipment, as well as the supplies and parts for such equipment. Kodak also provides repairs and service for such equipment. Kodak

manufactures, markets, sells and distributes its equipment under its own brand names. Kodak also manufactures or publishes, or causes to be manufactured or published, on an original equipment manufacture basis (hereinafter "OEM"), all of the parts for the repair and service of its micrographic and photocopy equipment. None of these products is manufactured or sold in the United States in any appreciable volume or on any basis other than directly through Kodak. Kodak provides repairs and service for Kodak micrographic and photocopy equipment. Except for plaintiffs said repairs and service are not provided in the United States in any appreciable volume or on any basis other than directly by Kodak. Kodak also reconditions and sells used Kodak micrographic and photocopy equipment.

25. Kodak micrographic and photocopy equipment - both new and used - is sold through its Business Systems Markets Division (hereinafter "BSMD"). Kodak micrographic and photocopy equipment is repaired and serviced by Kodak's Customer Equipment Services Division (hereinafter "CESD") either under a standardized annual service contract called an equipment maintenance agreement (hereinafter "EMA"), or on a "per call" basis. Customers whose equipment is repaired or serviced on a "per call" basis are charged for service and parts separately. A large majority of Kodak micrographic or photocopy equipment owners use Kodak service and purchase EMA contracts largely because of Kodak's control over parts for the service of its micrographic and photocopy equipment and its policies with regard to service and parts as set out herein.

### **Nature of the Trade and Commerce**

26. Within the industry for micrographic and photocopy equipment, purchasers of micrographic and photocopy equipment and consumers of the parts and service for that equipment are recognized according to the brand of equipment they own. Members of the industry understand and agree that the brand of equipment differentiates the various purchasers and consumers. Separate and distinct parts and service organizations have developed for service of each of the major micrographic and photocopy equipment brands. Different marketing strategies are employed in attempting to sell micrographic and photocopy equipment, parts and service to owners of different brands of equipment. Distinct prices are employed based on the brands of equipment. Different sensitivities to price changes exist as to the different brands of equipment and as to parts and service for different brands of equipment.

27. Kodak micrographic and photocopy equipment are unique products. Kodak is one of the best brands of micrographic and photocopy equipment and commands a reputation for quality. It is differentiated in the industry as to users, price, marketing strategies, and price elasticity. Parts and service for Kodak micrographic and photocopy equipment are likewise differentiated from parts and service for other brands.

28. Owners of Kodak brand micrographic and photocopy equipment are locked-into purchasing additional Kodak equipment, and to purchasing Kodak parts and service for their equipment because of a number of factors. These factors include the high capital investment in

the equipment, the uniqueness of Kodak micrographic and photocopy equipment, the control by Kodak of parts, the control by Kodak of service, the control by Kodak of resale of used Kodak equipment, the difference in microfilm formats, the difference in operator skills between different brands of equipment, the difficulty of obtaining single-source repair and service for diverse equipment brands, and numerous other practical factors in the marketplace.

29. Competition in the manufacture and sale of Kodak micrographic and photocopy equipment, as well as in parts, repair and service of such equipment is dominated by Kodak. Barriers to entry into the manufacture of Kodak micrographic and photocopy equipment, into the manufacture of parts and into repair and service for such equipment are high. The manufacture of said equipment and parts, and the repair and service of said equipment require high technical expertise and a long lead time to develop. Kodak has established a monopoly in the sale of its micrographic and photocopy equipment through its control over manufacture and distribution of such equipment and its control over parts and service for such equipment. Kodak has established a monopoly in the repair and service of Kodak micrographic and photocopy equipment through its control over parts for this equipment. Kodak has established a monopoly over parts for Kodak micrographic and photocopy equipment through its control over the manufacture, distribution and service for such equipment.

30. Prior to plaintiffs' entry into the sales and the service markets for Kodak micrographic and photocopy equipment, Kodak enjoyed a unique and profitable

monopoly position in its sales and servicing of Kodak micrographic and photocopy equipment and accordingly charged substantially higher prices for its sales and for its repair and service of such equipment before the entry of plaintiffs into these markets.

31. Plaintiffs have purchased parts for the reconditioning, repair and service of Kodak photocopy equipment from Kodak in the past. Plaintiffs have purchased parts for the reconditioning, repair and service of Kodak micrographic equipment from Kodak in the past, and continue to purchase some of said parts from Kodak. Some customers of plaintiffs who purchase used or reconditioned micrographic and photocopy equipment from plaintiffs have purchased repairs and service for this equipment from Kodak in the past and some continue to do so.

32. The parts for repair, service, and reconditioning of Kodak micrographic and photocopy equipment are supplied through Kodak's CESD Parts Services. The written "Terms of Sale" for the purchase of Kodak parts from CESD provided in November 1985, as one of its "CESD Replacement Parts Principles," that:

"Kodak distributes parts throughout the world and does not rely upon dealers, agents, or distributors in the U.S. to perform this distribution function. Therefore, Kodak will sell replacement parts to any party who intends to use them to repair Kodak equipment."

Said Terms of Sale also provided that:

"If, at any time, it becomes necessary to discontinue shipments to any of its customers, to revoke or modify any of these terms of sale, or

to allocate distribution of any of its products, Kodak shall take whatever action in its judgment is fair and appropriate."

33. In the past Kodak has made parts for Kodak micrographic and photocopy equipment available to "any party" on short notice or on a rush basis, providing for overnight delivery anywhere in the United States. Kodak has continued to sell parts for its micrographic and photocopy equipment on the same basis to equipment owners who repair and service their own equipment, to some independent service organizations and to authorized Kodak dealers, but not to plaintiffs. In the past Kodak has made ten percent (10%) discount available to purchasers of parts who did not require shipment on short notice or a rush basis, and continues to do so for some customers, but not for plaintiffs.

34. Prior to April, 1985, Kodak had sold parts for all Kodak micrographic equipment to plaintiffs, including parts for newly introduced micrographic equipment. Prior to July 1985, Kodak had also sold parts for all Kodak photocopy equipment to plaintiffs.

35. In reliance upon these policies of Kodak prior to April 1985, with regard to micrographic equipment, and prior to July 1985, with regard to photocopy equipment, and based upon the Replacement Parts Principles and the Terms of Sale of CESD for the sale of such parts to "any party," plaintiffs: (1) purchased said parts for the repair, servicing and reconditioning of Kodak micrographic and photocopy equipment; (2) recruited, hired and trained qualified personnel, including many Kodak-trained technicians with expertise in the servicing of Kodak micrographic and photocopy equipment; (3) developed

customer bases for the service and sale of Kodak micrographic and photocopy equipment; (4) bid for and received many contracts in the public and private sectors to repair, service and supply such equipment; and, (5) sold used and reconditioned Kodak micrographic and photocopy equipment.

36. Prior to April 1985, with regard to micrographic equipment, and prior to July 1986, with regard to photocopy equipment, Kodak had supplied repair and service for Kodak micrographic and photocopy equipment irrespective of whether the equipment had been purchased by the owner directly from Kodak or had been purchased as used or reconditioned equipment from plaintiffs. In reliance upon said policy, plaintiffs developed their businesses, hired and trained qualified personnel and developed customer bases for the reconditioning of and for the sale of used and reconditioned Kodak micrographic and photocopy equipment. Plaintiffs purchased, reconditioned and sold used and reconditioned Kodak micrographic and photocopy equipment in competition with Kodak and developed substantial inventories in said equipment as well as goodwill in the industry.

37. Plaintiffs have been awarded term contracts for the repair and service of Kodak micrographic and photocopy equipment in competition with Kodak by state and local governmental entities and private business organizations, usually through the bid process. Often, plaintiffs and Kodak were the only bidders for such contracts.

#### **Unlawful Acts of Defendant**

38. Beginning in or about April 1985, Kodak adopted a new policy under which it refused to sell parts on all newly introduced micrographic equipment to independent service organizations, including plaintiffs. These parts were, however, made available to Kodak Equipment Service Representatives (hereinafter "ESR"), government customers, and to Kodak equipment owners who repaired and serviced their own micrographic equipment.

39. Beginning in or about July 1985, with regard to photocopy equipment, and beginning in or about July 1986, with regard to micrographic equipment, and after the award of term contracts to plaintiffs by state and local governmental agencies and by private business organizations for the repair of such equipment, Kodak refused to sell to plaintiffs, or sold to plaintiffs only on discriminatory, unreasonable and economically unviable terms, parts for the service of Kodak micrographic and photocopy equipment.

40. Since said dates Kodak has arbitrarily and discriminatorily "flagged" plaintiffs' and others parts accounts at CESD solely because they compete with Kodak on a large scale and has delayed delivery or refused sale of parts to plaintiffs on the basis of: (1) spurious credit terms; (2) arbitrary definitions of parts or of parts categories (such as "all-time parts" which are not available to plaintiffs); (3) phantom parts shortages; and, (4) other reasons not related to fact or legitimate economic or business interests.

41. Plaintiffs have attempted, since said dates, to place orders for said parts, just as they had been placed

in the past. Often "control numbers" were provided by CESD, but the parts were never shipped by Kodak or new "control numbers" were issued after long delays. Often the long delays were unexplained or plaintiffs were unable to get the parts, while other purchasers, not competing with Kodak, received the same parts on an expeditious basis. Often new, unexplained or unjustified credit terms, or terms of sale were used by Kodak to delay or block plaintiffs' purchases. Kodak has refused to give to plaintiffs legitimate economic or business reasons for its purported change in policy and its current practices.

42. These policies of Kodak in refusing to sell parts, or selling them on unreasonable terms, were instituted by Kodak despite prior sales by Kodak of parts to plaintiffs on non-discriminatory, reasonable and economically viable terms, despite the "Replacement Parts Principles" and the "Terms of Sale" existing theretofore, and despite the continuing sales of parts on non discriminatory, reasonable and economically viable terms, to some parties outside of Kodak's CESD. These parties included governmental entities, owners of Kodak equipment purchased directly from Kodak, and independent service organizations either not competing directly with Kodak or not competing in any appreciable volume with Kodak.

43. Plaintiffs have attempted to purchase Kodak parts through other companies which own and service their own Kodak micrographic and photocopy equipment and through bona fide Kodak dealers who have been allowed to purchase such items directly from Kodak, but plaintiffs have largely been unable to do so because of Kodak's policies and actions.

44. Beginning in or about November 1986 Kodak adopted a policy under which it refused to sell parts for Kodak micrographic or photocopy equipment to some owners of Kodak micrographic or photocopy equipment solely on the basis that the owner competed with Kodak for service of equipment. On this basis, Kodak has refused to sell parts to plaintiffs even though they have purchased micrographic and photocopy equipment directly from Kodak, solely because plaintiffs compete with Kodak in the service of Kodak equipment.

45. Kodak has also engaged in practices which discriminate against plaintiffs in their purchases of Kodak micrographic and photocopy equipment parts, when such parts are, or were available, by: (1) refusing to give plaintiffs discounts available to other customers; (2) providing free parts to Kodak CESD customers; and, (3) charging plaintiffs over two times the price that is charged to other customers at the same distribution level for some parts.

46. Parts for Kodak micrographic and photocopy equipment, which Kodak now refuses to sell directly to plaintiffs and as to which Kodak refuses to allow indirect sales to plaintiffs, are absolutely necessary for the repair and service of Kodak micrographic and photocopy equipment under plaintiffs' contracts with state and local governmental entities and with private entities.

47. If plaintiffs are unable to perform on contracts to service Kodak micrographic and photocopy equipment with state and local entities, they can be formally "black-listed" for such contracts, preventing them from submitting bids on any other government contracts for a period of years. The "black-listing" of plaintiffs by state and

local governments would eliminate them as competitors to Kodak in the sales, repair and service of Kodak micrographic and photocopy equipment in these markets.

48. Beginning in or about April 1985 Kodak began to refuse repair, service and parts for used Kodak micrographic and photocopy equipment sold by plaintiffs or to provide these only on discriminatory, unreasonable and economically unviable terms and conditions. Kodak's actions in this respect have included, but are not limited to: (1) the cut-off of parts to plaintiffs by Kodak; (2) the requiring by Kodak of unreasonable transportation, inspection, reconditioning, certification or modification charges; (3) the requiring by Kodak of the purchase of a Kodak EMA; (4) the refusing by Kodak of repairs or service altogether; and, (5) the sale of parts to equipment owners who purchased their equipment directly from Kodak, while refusing sale to owners of the same equipment purchased from plaintiffs. Said actions were often taken without regard to the condition of the equipment, the prior service on the equipment or for any other legitimate reason.

49. Kodak has represented to owners of Kodak micrographic and photocopy equipment that plaintiffs are unable to get parts for Kodak micrographic and photocopy equipment, will be unable to repair or service such equipment, and will not be in business to fulfill their contracts for repair and service of such equipment.

50. Kodak has represented to owners of Kodak micrographic and photocopy equipment, and to potential owners of said equipment that plaintiffs who recondition

such equipment, or who broker used and reconditioned Kodak equipment will be put out of business by Kodak.

51. Kodak has refused repairs or service for Kodak micrographic and photocopy equipment where non-Kodak parts have been used or where plaintiffs' services have been employed by owners of Kodak micrographic and photocopy equipment.

52. Kodak has entered into contracts, combinations and conspiracies with OEM suppliers of parts for Kodak micrographic and photocopy equipment to prevent them from providing plaintiffs with parts for Kodak micrographic and photocopy equipment.

53. Kodak has entered into contracts, combinations and conspiracies with owners of Kodak micrographic and photocopy equipment who purchase parts for such equipment from Kodak to prevent the sale of such parts to plaintiffs who recondition, repair and service Kodak micrographic and photocopy equipment.

54. Kodak has entered into contracts, combinations and conspiracies to prevent the sale of used and reconditioned Kodak micrographic and photocopy equipment by plaintiffs through the aforesaid acts and practices of Kodak and by forbidding the sale of parts by customers of Kodak to persons who purchase used and reconditioned equipment from plaintiffs.

55. Kodak has entered into contracts, combinations and conspiracies with organizations which repair and service Kodak micrographic and photocopy equipment to allocate territories for such repair and service, to refuse to deal with plaintiffs and to exclude plaintiffs from such

repair and service through the denial of parts to plaintiffs.

56. Kodak has also entered into contracts, combinations and conspiracies with entities financing Kodak micrographic and photocopy equipment to prevent plaintiffs from doing repair and service of said equipment by requiring as a condition or understanding of said financing that Kodak's CESD repair and service be used.

57. Due to the aforesaid acts and practices of Kodak, Kodak has required that customers use Kodak repair and service for micrographic and photocopy equipment as a condition to obtaining parts for said equipment. Customers of Kodak purchasing Kodak micrographic and photocopy equipment and related accessories from Kodak or others, as well as existing owners of Kodak micrographic and photocopy equipment purchased from Kodak or others, due to the aforesaid acts and Kodak's foreclosure of the relevant market, have been and are required to contract with Kodak for the repair and service of said equipment, thereby constituting unlawful "tie-in" arrangements in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

58. Due to the aforesaid acts and practices of Kodak, customers purchasing Kodak micrographic and photocopy equipment have been and are required to purchase parts and service from Kodak as a condition to purchasing said equipment, thereby constituting unlawful "tie-in" arrangements in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C.

§ 1), commonly known as the Sherman Act, and in violation of Section 3 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 14), commonly known as the Clayton Act.

59. Customers purchasing Kodak micrographic and photocopy equipment, due to the aforesaid acts and practices of Kodak, have been and are required to purchase equipment directly from Kodak as a condition to obtaining parts for said equipment, thereby constituting unlawful "tie-in" arrangements in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act, and in violation of Section 3 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 14), commonly known as the Clayton Act.

### Injury

60. By reason of Kodak's aforesaid unlawful conduct and as a direct and proximate result of such conduct plaintiffs have lost sales, profits and value of their businesses. Plaintiffs have suffered and will continue to suffer irreparable harm through loss of and injury to their trade and business in that: (1) plaintiffs have been and will be precluded from entering into contracts for the sale, service and repair of Kodak micrographic and photocopy equipment; (2) plaintiffs have been and will be precluded from carrying out contracts already entered into for the sale, service and repair of Kodak micrographic and photocopy equipment; (3) plaintiffs have been and will continue to be irreparably harmed in their reputations and goodwill; (4) plaintiffs and others will be eliminated from

the sale, repair and service of Kodak micrographic and photocopy equipment; and, (5) independent sources for Kodak equipment parts will be eliminated.

61. The aforesaid violations of Section 1 of the Sherman Act and Section 3 of the Clayton Act have had and will continue to have the following effects, among others:

- (a) Denying plaintiffs free access to the market for the reconditioning and sale of used Kodak micrographic and photocopy equipment;
- (b) Denying plaintiffs free access to the market for the repair and service of Kodak micrographic and photocopy equipment;
- (c) Denying the public free choice in the markets for reconditioned and used Kodak micrographic and photocopy equipment, and for the repair and service of such equipment;
- (d) Impacting a substantial amount of commerce both in the reconditioning and sale of used Kodak micrographic and photocopy equipment, and in the repair and service of such equipment; and,
- (e) Substantially lessening competition and tending to create a monopoly in the sale of used Kodak micrographic and photocopy equipment, and in the parts, repair and service of such equipment.

#### **Prayer for Relief**

**WHEREFORE**, as and for a First Claim for Relief plaintiffs pray this court to order, adjudge and decree that:

A. Defendant Kodak has violated Section 1 of the Sherman Act and Section 3 of the Clayton Act.

B. Plaintiffs be awarded damages, and that defendant Kodak pay plaintiffs threefold the damages awarded;

C. Plaintiffs be awarded reasonable attorneys fees;

D. Plaintiffs recover interest on actual damages;

E. Plaintiffs recover costs of suit; and

F. Plaintiffs be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

#### **SECOND CLAIM FOR RELIEF (All Plaintiffs)**

##### **(Monopolization – Sherman Act § 2)**

##### **Jurisdiction and Venue**

62. The jurisdiction of this court is invoked and this action is instituted under the provisions of Section 1337 of Title 28, United States Code (28 U.S.C. § 1337) and Sections 4, 12 and 16 of the Clayton Act (15 U.S.C. §§ 15, 22 and 26) to declare, to prevent and restrain and to recover damages sustained by plaintiffs as a result of violations of Section 2 of the Sherman Act (15 U.S.C. § 2).

63. Plaintiffs incorporate herein by reference the allegations of paragraph 2 of the First Claim for Relief, with the same force and effect as if said paragraph were herein set forth in full.

### Description of Plaintiffs

64. Plaintiffs incorporate herein by reference the allegations of paragraphs 3 through 23 inclusive of the First Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

### Description of Defendant

65. Plaintiffs incorporate herein by reference the allegations of paragraphs 24 and 25 of the First Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

### Nature of Trade and Commerce

66. Plaintiffs incorporate herein by reference the allegations of paragraphs 26 through 37 inclusive of the Fist Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

### Unlawful Acts of Defendant

67. Plaintiffs incorporate herein by reference the allegations of paragraphs 38 through 59 inclusive of the First Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

68. The aforesaid conduct and acts of Kodak were engaged in by Kodak with the purpose and intent: (1) to injure, suppress, destroy and irreparably harm plaintiffs and others as vital competitors in the relevant markets; (2) to integrate vertically and to monopolize the reconditioned and used Kodak micrographic and photocopy

equipment market; (3) to monopolize the service market for Kodak micrographic and photocopy equipment; (4) to leverage into said reconditioned and used equipment market as well as the service market; (5) to control prices; and, (6) unlawfully to monopolize trade and commerce in said relevant markets in violation of Section 2 of the Act of Congress of July 2, 1890 (15 U.S.C. § 2), commonly known as the Sherman Act.

### Injury

69. By reason of Kodak's aforesaid unlawful conduct and as a direct and proximate result of such conduct, plaintiffs have lost sales, profits and value of their businesses. Plaintiffs have suffered, and will continue to suffer irreparable harm through loss of their trade and business, and the public will be damaged by: (1) the elimination of plaintiffs and others in the sales, repair and service of Kodak micrographic and photocopy equipment in the relevant markets; (2) the elimination of independent sources for Kodak micrographic and photocopy equipment parts in the relevant markets; and, (3) the elimination of suppliers of and the supply of used and reconditioned Kodak micrographic and photocopy equipment in the relevant markets.

70. The aforesaid violations of Section 2 of the Sherman Act have had, will have, and will continue to have the following effects, among others:

- (a) Defendant Kodak has achieved and maintained a monopoly in the repair and service of Kodak micrographic and photocopy equipment, in the parts therefor, and in the sales thereof in the relevant markets;

- (b) Defendant Kodak has restrained, suppressed and eliminated actual and potential competition in the repair and service of Kodak micrographic and photocopy equipment, in the parts therefor, and in the sales thereof in the relevant markets;
- (c) The public has been denied the benefits of unrestricted competition in a free and open market in the maintenance, repair and service of Kodak micrographic and photocopy equipment, in the parts therefor, and in the sales thereof in the relevant markets;
- (d) Plaintiffs have been denied the benefits of unrestricted competition in a free and open market for the maintenance, repair and service of Kodak micrographic and photocopy equipment, in the parts therefor, and in the sales thereof in the relevant markets; and,
- (e) Plaintiffs have been precluded from obtaining and carrying out substantial contracts entered into for the maintenance, repair and service of Kodak micrographic and photocopy equipment and related accessories, for the parts therefor, and for the sale thereof in the relevant markets.

**Prayer for Relief**

WHEREFORE, as and for a Second Claim for Relief, plaintiffs pray this court to order, adjudge and decree that:

A. Defendant Kodak has engaged in monopolization of the relevant markets in violation of Section 2 of the Sherman Act;

- B. Plaintiffs be awarded damages, when ascertained, and that defendant Kodak pay plaintiffs threefold the damages;
- C. Plaintiffs be awarded reasonable attorneys' fees;
- D. Plaintiffs recover interest on actual damages;
- E. Plaintiffs recover costs of suit; and,
- F. Plaintiffs be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

**THIRD CLAIM FOR RELIEF  
(All Plaintiffs)**

**(Attempt to Monopolize – Sherman Act Section 2)**

**Jurisdiction and Venue**

71. The jurisdiction of this court is invoked and this action is instituted under the provisions of Section 1337 of Title 28, United States Code (28 U.S.C. § 1337) and Sections 4, 12 and 16 of the Clayton Act (15 U.S.C. §§ 15, 22 and 26) to declare, to prevent and restrain and recover damages sustained by plaintiffs as a result of violations of Section 2 of the Sherman Act (15 U.S.C. § 2).

72. Plaintiffs incorporate herein by reference the allegations of paragraph 2 of the First Claim for Relief, with the same force and effect as if said paragraph were herein set forth in full.

### **Description of Plaintiffs**

73. Plaintiffs incorporate herein by reference the allegations of paragraphs 3 through 23 inclusive of the First Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

### **Description of Defendant**

74. Plaintiffs incorporate herein by reference the allegations of paragraphs 24 and 25 of the First Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

### **Nature of Trade and Commerce**

75. Plaintiffs incorporate herein by reference the allegations of paragraphs 26 through 37 inclusive of the First Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

### **Unlawful Acts**

76. Plaintiffs incorporate herein by reference the allegations of paragraphs 38 through 59 inclusive of the First Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

77. The aforesaid conduct and acts of Kodak were engaged in by Kodak with the purpose and intent to injure, suppress, destroy and irreparably harm plaintiffs as vital competitors in the relevant market; and, to control prices and to unlawfully monopolize trade and commerce in said relevant markets in violation of Section 2 of

the Act of Congress of July 2, 1890 (15 U.S.C. § 2), commonly known as the Sherman Act. Said conduct and acts of Kodak has created and creates a dangerous probability that Kodak will succeed in injuring, suppressing, destroying and irreparably harming plaintiffs as vital competitors in the relevant markets and will allow Kodak to control prices and monopolize trade and commerce in said relevant markets.

### **Injury**

78. By reason of Kodak's aforesaid unlawful conduct and as a direct and proximate result of such conduct, plaintiffs have lost sales, profits and value of their businesses. Plaintiffs have, and will continue to suffer irreparable harm through loss of their trade and business, and the public will be damaged by: (1) the weakening or elimination of plaintiffs and others in the repair and service of Kodak micrographic and photocopy equipment in the relevant markets; (2) the weakening or elimination of independent sources for parts for Kodak micrographic and photocopy equipment; and, (3) the weakening or elimination of suppliers of and the supply of used and reconditioned Kodak micrographic and photocopy equipment.

79. The foresaid violations of Section 2 of the Sherman Act have had, will have, and will continue to have the following effects, among others:

- (a) There will be a dangerous probability that defendant Kodak will achieve a monopoly in the repair and service of Kodak micrographic and photocopy equipment, in the

parts therefor, and in the sales thereof in the relevant markets;

- (b) Defendant Kodak has and will restrain, suppress and eliminate actual and potential competition in the repair and service of Kodak micrographic and photocopy equipment, in the parts therefor, and in the sales thereof in the relevant markets;
- (c) The public has been and will be denied the benefits of unrestricted competition in a free and open market in the repair and service of Kodak micrographic and photocopy equipment, in the parts therefor, and, in the sales thereof in the relevant markets;
- (d) Plaintiffs have been and will be denied the benefits of unrestricted competition in a free and open market for the repair and service of Kodak micrographic and photocopy equipment, in the parts therefor, and, in the sales thereof in the relevant markets; and,
- (e) Plaintiffs have been and will be precluded from obtaining and carrying out substantial contracts entered into for the repair and service of Kodak micrographic and photocopy equipment and related accessories, for the parts therefor, and for the sale thereof in the relevant markets.

#### **Prayer for Relief**

WHEREFORE, as and for a Third Claim for Relief, plaintiffs pray this court to order, adjudge and decree that:

A. Defendant Kodak has attempted to monopolize the relevant markets in violation of Section 2 of the Sherman Act;

- B. Plaintiffs be awarded damages, when ascertained, and that defendant Kodak pay plaintiffs threefold the damages;
- C. Plaintiffs be awarded reasonable attorneys' fees;
- D. Plaintiffs recover interest on actual damages;
- E. Plaintiffs recover costs of suit; and,
- F. Plaintiffs be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

#### **FOURTH CLAIM FOR RELIEF (All Plaintiffs)**

**(Combination, Contracts, Conspiracies in Restraint of Trade; Combination and Conspiracy to Monopolize – Sherman Act Sections 1 and 2)**

#### **Jurisdiction and Venue**

80. The jurisdiction of this court is invoked and this action is instituted under the provisions of Section 1337 of Title 28, United States Code (28 U.S.C. § 1337) and Sections 4, 12 and 16 of the Clayton Act (15 U.S.C. §§ 15, 22 and 26) to declare, to prevent and restrain and recover damages sustained by plaintiffs as a result of violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2).

81. Plaintiffs incorporate herein by reference the allegations of paragraph 2 of the First Claim for Relief, with the same force and effect as if said paragraph were herein set forth in full.

### Description of Plaintiffs

82. Plaintiffs incorporate herein by reference the allegations of paragraphs 3 through 23 inclusive of the First Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

### Description of Defendant

83. Plaintiffs incorporate herein by reference the allegations of paragraphs 24 and 25 of the First Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

### Nature of Trade and Commerce

84. Plaintiffs incorporate herein by reference the allegations of paragraphs 26 through 37 inclusive of the First Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

### Unlawful Acts

85. Plaintiffs incorporate herein by reference the allegations of paragraphs 38 through 59, inclusive of the First Claim for Relief, with the same force and effect as if said paragraphs were set forth in full.

86. The aforesaid conduct and acts of Kodak and others in contract, combination and conspiracy with Kodak unreasonably restrained trade in the relevant markets and were done with purpose and intent to control prices and to unlawfully monopolize trade and commerce in said relevant markets in violation of Sections 1 and 2 of

the Act of Congress of July 2, 1890 (15 U.S.C. §§ 1 and 2), commonly known as the Sherman Act.

### Injury

87. By reason of Kodak's aforesaid unlawful conduct and as a direct and proximate result of such conduct, plaintiffs have lost sales, profits and value of their businesses. Plaintiffs have, and will continue to suffer irreparable harm through loss of their trade and business, and the public will be damaged by: (1) the weakening or elimination of plaintiffs and others in the maintenance, repair and service of Kodak micrographic and photocopy equipment in the relevant markets; (2) the weakening or elimination of independent sources for parts to Kodak micrographic and photocopy equipment; and, (3) the weakening or elimination of suppliers of and the supply of used and reconditioned Kodak micrographic and photocopy equipment.

88. The foresaid violations of Sections 1 and 2 of the Sherman Act have had, will have, and will continue to have the following effects, among others:

- (a) Defendant Kodak has achieved and maintained a monopoly in the repair and service of Kodak micrographic and photocopy equipment, in the parts therefor, and in the sales thereof in the relevant markets;
- (b) Defendant Kodak has restrained, suppressed and eliminated actual and potential competition in the repair and service of Kodak micrographic and photocopy equipment, in the parts therefor, and in the sales thereof in the relevant markets;

- (c) The public has been denied the benefits of unrestricted competition in a free and open market in the repair and service of Kodak micrographic and photocopy equipment, in the parts therefor, and in the sales thereof in the relevant markets;
- (d) Plaintiffs have been denied the benefits of unrestricted competition in a free and open market for the repair and service of Kodak micrographic and photocopy equipment, in the parts therefor, and, in the sales thereof in the relevant markets; and,
- (e) Plaintiffs have been precluded from obtaining and carrying out substantial contracts entered into for the repair and service of Kodak micrographic and photocopy equipment and related accessories, for the parts therefor, and for the sale thereof in the relevant markets.

#### **Prayer for Relief**

WHEREFORE, as and for a Fourth Claim for Relief, plaintiffs pray this court to order, adjudge and decree that:

- A. Defendant Kodak has engaged in unreasonable contracts, combinations and conspiracies in restraint of trade in the relevant markets and has unreasonably combined and conspired to monopolize trade in the relevant markets in violation of Sections 1 and 2 of the Sherman Act;
- B. Plaintiffs be awarded damages, when ascertained, and that defendant pay plaintiffs threefold the damages;

- C. Plaintiffs be awarded reasonable attorneys' fees;
- D. Plaintiffs recover interest on actual damages;
- E. Plaintiffs recover costs of suit; and,
- F. Plaintiffs be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

#### **FIFTH CLAIM FOR RELIEF**

**(As to Plaintiffs ITS, Omni, G&S and CPO)**

**(California Unfair Competition Laws – Cal.Bus. & Prof.Code §§ 16700-16760, 17000-17101, 17200-17208)**

#### **Jurisdiction and Venue**

89. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C. §§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs. This claim arises out of the facts previously alleged in support of the First, Second, Third and Fourth Claims For Relief and therefore falls within the pendent jurisdiction of this court.

#### **Claim**

90. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 3, 9, and 19 through 61, inclusive, of the First Claim for Relief; paragraphs 68 through 70 inclusive, of the Second Claim for Relief;

paragraphs 77 through 79 inclusive, of the Third Claim for Relief; and paragraphs 86 through 88 inclusive, of the Fourth Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

91. Kodak has offices in and is qualified to do business in California. Kodak does a substantial amount of business in California, including substantial sales and a substantial amount of repair and service of Kodak micrographic and photocopy equipment. Kodak has therefore voluntarily chosen to be subject to the laws of California. The aforesaid acts and practices of Kodak occurred in California, were intended to injure, and as a foreseeable and direct consequence injured plaintiffs ITS, Omni, G&S and CPO in their trade and business in California. Plaintiffs are citizens of California, and California has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

92. The aforesaid acts and practices of Kodak violate the California Cartwright Act (California Business and Professions Code §§ 16700-16760), the California Unfair Practices Act (California Business and Professions Code §§ 17000-17101) and the California Unfair Competition Act (California Business and Professions Code §§ 17200-17208).

#### **Prayer for Relief**

WHEREFORE, as and for a Fifth Claim for Relief, plaintiffs ITS, Omni, G&S and CPO pray this court to order, adjudge and decree that:

- A. Defendant Kodak has violated the aforesaid California laws;
- B. Plaintiffs be awarded damages, when ascertained, and that defendant Kodak pay plaintiffs threefold the damages;
- C. Plaintiffs be awarded reasonable attorneys' fees;
- D. Plaintiffs recover interest on actual damages;
- E. Plaintiffs recover costs of suit; and,
- F. Plaintiffs be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

#### **SIXTH CLAIM FOR RELIEF (As to Plaintiffs J-E-S-P and Data Prox)**

**(New Jersey Statutes Annotated §§ 56:9-1 et seq.)**

#### **Jurisdiction and Venue**

93. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C. §§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs. This claim arises out of the facts previously alleged in support of the First, Second, Third and Fourth Claims For Relief and therefore falls within the pendent jurisdiction of this court.

### **Claim**

94. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 2, 4, 14 and 21 through 61, inclusive, of the First Claim for Relief; paragraphs 68 through 70 inclusive, of the Second Claim for Relief; paragraphs 77 through 79 inclusive, of the Third Claim for Relief; and paragraphs 86 through 88 inclusive, of the Fourth Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

95. Kodak has offices in and is qualified to do business in New Jersey. Kodak does a substantial amount of business in New Jersey, including substantial sales and a substantial amount of repair and service of Kodak micrographic and photocopy equipment. Kodak has therefore voluntarily chosen to be subject to the laws of New Jersey. The aforesaid acts and practices of Kodak occurred in New Jersey, were intended to injure, and as a foreseeable and direct consequence injured plaintiffs J-E-S-P and Data Prox in their trade and business in New Jersey. Plaintiffs are citizens of New Jersey, and New Jersey has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

96. The aforesaid acts and practices of Kodak violate the New Jersey Antitrust Act (New Jersey Statutes Annotated §§ 56:9-1 et seq.)

### **Prayer for Relief**

WHEREFORE, as and for a Sixth Claim for Relief, plaintiffs J-E-S-P and Data Prox pray this court to order, adjudge and decree that:

A. Defendant Kodak has violated the aforesaid New Jersey laws;

B. Plaintiffs be awarded damages, when ascertained, and that defendant Kodak pay plaintiffs threefold the damages;

C. Plaintiffs be awarded reasonable attorneys' fees;

D. Plaintiffs recover interest on actual damages;

E. Plaintiffs recover costs of suit; and,

F. Plaintiffs be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

### **SEVENTH CLAIM FOR RELIEF**

(As to Plaintiffs Micrographic Services,  
Ingle and Fisher)

(Missouri Revised Statutes, § 416.001 et seq.)

### **Jurisdiction and Venue**

97. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C. §§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs. This claim arises out of the facts previously alleged in support of the First, Second, Third and Fourth Claims For Relief and therefore falls within the pendent jurisdiction of this court.

### **Claim**

98. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 2, 13, 15, and 21 through 61, inclusive, of the First Claim for Relief; paragraphs 68 through 70 inclusive, of the Second Claim for Relief; paragraphs 77 through 79 inclusive, of the Third Claim for Relief; and paragraphs 86 through 88 inclusive, of the Fourth Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

99. Kodak has offices in and is qualified to do business in Missouri. Kodak does a substantial amount of business in Missouri, including substantial sales and a substantial amount of repair and service of Kodak micrographic and photocopy equipment. Kodak has therefore voluntarily chosen to be subject to the laws of Missouri. The aforesaid acts and practices of Kodak occurred in Missouri, were intended to injure, and as a foreseeable and direct consequence injured plaintiffs Micrographic Services, Ingle and Fisher in their trade and business in Missouri. Plaintiffs are citizens of Missouri, and Missouri has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

100. The aforesaid acts and practices of Kodak violate the Missouri Antitrust Law (Missouri Revised Statutes § 416.010 et seq.)

### **Prayer for Relief**

WHEREFORE, as and for a Seventh Claim for Relief, plaintiffs Micrographic Services, Ingle and Fisher pray this court to order, adjudge and decree that:

A. Defendant Kodak has violated the aforesaid Missouri law;

B. Plaintiffs be awarded damages, when ascertained, and that defendant Kodak pay plaintiffs threefold the damages;

C. Plaintiffs be awarded reasonable attorneys' fees;

D. Plaintiffs recover interest on actual damages;

E. Plaintiffs recover costs of suit; and,

F. Plaintiffs be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

### **EIGHTH CLAIM FOR RELIEF (As to Plaintiffs Amtec and Midwest)**

(Minnesota Statutes §§ 325D.01, et seq.; 325D.09 et seq.; and, 325D.49 et seq.)

### **Jurisdiction and Venue**

101. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C. §§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs. This claim arises out of the facts previously alleged in support of the First, Second, Third and Fourth Claims For Relief and therefore falls within the pendent jurisdiction of this court.

### **Claim**

102. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 2, 10, 18, and 21 through 61, inclusive, of the First Claim for Relief; paragraphs 68 through 70 inclusive, of the Second Claim for Relief; paragraphs 77 through 79 inclusive, of the Third Claim for Relief; and paragraphs 86 through 88 inclusive, of the Fourth Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

103. Kodak has offices in and is qualified to do business in Minnesota. Kodak does a substantial amount of business in Minnesota, including substantial sales and a substantial amount of repair and service of Kodak micrographic and photocopy equipment. Kodak has therefore voluntarily chosen to be subject to the laws of Minnesota. The aforesaid acts and practices of Kodak occurred in Minnesota, were intended to injure, and as a foreseeable and direct consequence injured plaintiffs Amtec and Midwest in their trade and business in Minnesota. Plaintiffs are citizens of Minnesota, and Minnesota has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

104. The aforesaid acts and practices of Kodak violate the Minnesota Antitrust Law of 1971 (Minnesota Statutes §§ 325D.49 et seq.) the Minnesota act against Unfair Discrimination and Competition (Minnesota Statutes §§ 325D.01 – 325D.08) and the Minnesota Unlawful Trade Practices Act (Minnesota Statutes §§ 325D.09 – 325D.16).

### **Prayer for Relief**

WHEREFORE, as and for an Eighth Claim for Relief, plaintiffs Amtec and Midwest pray this court to order, adjudge and decree that:

- A. Defendant Kodak has violated the aforesaid Minnesota laws;
- B. Plaintiffs be awarded damages, when ascertained, and that defendant Kodak pay plaintiffs threefold the damages;
- C. Plaintiffs be awarded reasonable attorneys' fees;
- D. Plaintiffs recover interest on actual damages;
- E. Plaintiffs recover costs of suit; and,
- F. Plaintiffs be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

### **NINTH CLAIM FOR RELIEF (As to Plaintiffs Advanced and BCS)**

(Colorado Revised Statutes §§ 6-1-101 through 6-1-114; 6-2-101 through 6-2-117; and 6-4-101 through 6-4-109)

#### **Jurisdiction and Venue**

105. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C. §§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs. This claim also arises out of the facts previously alleged in support

of the First, Second, Third and Fourth Claims For Relief and therefore falls within the pendent jurisdiction of this court.

#### **Claim**

106. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 2, 11 through 12 and 21 through 61, inclusive, of the First Claim for Relief; paragraphs 68 through 70 inclusive, of the Second Claim for Relief; paragraphs 77 through 79 inclusive, of the Third Claim for Relief; and paragraphs 86 through 88 inclusive, of the Fourth Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

107. Kodak has offices in and is qualified to do business in Colorado. Kodak does a substantial amount of business in Colorado, including substantial sales and a substantial amount of repair and service of Kodak micrographic and photocopy equipment. Kodak has therefore voluntarily chosen to be subject to the laws of Colorado. The aforesaid acts and practices of Kodak occurred in Colorado, were intended to injure, and as a foreseeable and direct consequence injured plaintiffs Advanced and BCS in their trade and business in Colorado. Plaintiffs are citizens of Colorado, and Colorado has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

108. The aforesaid acts and practices of Kodak violate the Colorado Consumer Protection Act (Colorado Revised Statutes §§ 6-1-101 through 6-1-114); the Colorado Unfair Practices Act (Colorado Revised Statutes

§§ 6-2-101 through 6-2-117) and the Colorado Fair Trade Act (Colorado Revised Statutes 6-4-101 through 6-4-109).

#### **Prayer for Relief**

WHEREFORE, as and for a Ninth Claim for Relief, plaintiffs Advanced and BCS pray this court to order, adjudge and decree that:

- A. Defendant Kodak has violated the aforesaid Colorado Acts;
- B. Plaintiffs be awarded damages, when ascertained, and that defendant Kodak pay plaintiffs threefold the damages;
- C. Plaintiffs be awarded reasonable attorneys' fees;
- D. Plaintiffs recover interest on actual damages;
- E. Plaintiffs recover costs of suit; and,
- F. Plaintiffs be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

#### **TENTH CLAIM FOR RELIEF (As to Plaintiff Shields)**

(Pennsylvania Unfair Sales Act - 73 Pennsylvania Statutes Annotated § 211 et seq.)

#### **Jurisdiction and Venue**

109. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C.

§§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs. This claim arises out of the facts previously alleged in support of the First, Second, Third and Fourth Claims For Relief and therefore falls within the pendent jurisdiction of this court.

#### **Claim**

110. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 2, 5 and 21 through 61, inclusive, of the First Claim for Relief; paragraphs 68 through 70 inclusive, of the Second Claim for Relief; paragraphs 77 through 79 inclusive, of the Third Claim for Relief; and paragraphs 86 through 88 inclusive, of the Fourth Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

111. Kodak has offices in and is qualified to do business in Pennsylvania. Kodak does a substantial amount of business in Pennsylvania, including substantial sales and a substantial amount of repair and service of Kodak micrographic and photocopy equipment. Kodak has therefore voluntarily chosen to be subject to the laws of Pennsylvania. The aforesaid acts and practices of Kodak occurred in Pennsylvania, were intended to injure, and as a foreseeable and direct consequence injured plaintiff Shields in its trade and business in Pennsylvania. Plaintiff is a citizen of Pennsylvania, and Pennsylvania has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

112. The aforesaid acts and practices of Kodak violate the Pennsylvania Unfair Sales Act (73 Pennsylvania Statutes Annotated § 211 et seq.).

#### **Prayer for Relief**

WHEREFORE, as and for a Tenth Claim for Relief, plaintiff Shields prays this court to order, adjudge and decree that:

- A. Defendant Kodak has violated the aforementioned Pennsylvania laws;
- B. Plaintiff be awarded damages, when ascertained;
- C. Plaintiff be awarded reasonable attorneys' fees;
- D. Plaintiff recover interest on actual damages;
- E. Plaintiff recover costs of suit; and,
- F. Plaintiff be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

#### **ELEVENTH CLAIM FOR RELIEF (As to Plaintiff Micro Maintenance)**

**(Illinois Revised Statutes § 60-1 et seq.)**

##### **Jurisdiction and Venue**

113. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C. §§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value

of \$10,000.00, exclusive of interest and costs. This claim arises out of the facts previously alleged in support of the First, Second, Third and Fourth Claims For Relief and therefore falls within the pendent jurisdiction of this court.

#### **Claim**

114. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 2, 7, and 21 through 61, inclusive, of the First Claim for Relief; paragraphs 68 through 70 inclusive, of the Second Claim for Relief; paragraphs 77 through 79 inclusive, of the Third Claim for Relief; and paragraphs 86 through 88 inclusive, of the Fourth Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

115. Kodak has offices in and is qualified to do business in Illinois. Kodak does a substantial amount of business in Illinois, including substantial sales and a substantial amount of repair and service of Kodak micrographic and photocopy equipment. Kodak has therefore voluntarily chosen to be subject to the laws of Illinois. The aforesaid acts and practices of Kodak occurred in Illinois, were intended to injure, and as a foreseeable and direct consequence injured plaintiff Micro Maintenance in its trade and business in Illinois. Plaintiff is a citizen of Illinois, and Illinois has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

116. The aforesaid acts and practices of Kodak violate the Illinois Antitrust Act (Illinois Revised Statutes § 60-1 et seq.)

#### **Prayer for Relief**

WHEREFORE, as and for a Eleventh Claim for Relief, plaintiff Micro Maintenance prays this court to order, adjudge and decree that:

- A. Defendant Kodak has violated the aforesaid Illinois act;
- B. Plaintiff be awarded damages, when ascertained, and that defendant Kodak pay plaintiff threefold the damages;
- C. Plaintiff be awarded reasonable attorneys' fees;
- D. Plaintiff recover interest on actual damages;
- E. Plaintiff recover costs of suit; and,
- F. Plaintiff be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

#### **TWELFTH CLAIM FOR RELIEF (As to Plaintiff Atlanta General) (Georgia Code Annotated § 20-504)**

##### **Jurisdiction and Venue**

117. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C. §§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs. This claim arises out of the facts previously alleged in support of the First, Second, Third and Fourth Claims For Relief and

therefore falls within the pendent jurisdiction of this court.

### **Claim**

118. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 2, 8 and 21 through 61, inclusive, of the First Claim for Relief; paragraphs 68 through 70 inclusive, of the Second Claim for Relief; paragraphs 77 through 79 inclusive, of the Third Claim for Relief; and paragraphs 86 through 88 inclusive, of the Fourth Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

119. Kodak has offices in and is qualified to do business in Georgia. Kodak does a substantial amount of business in Georgia, including substantial sales and a substantial amount of repair and service of Kodak micro-graphic and photocopy equipment. Kodak has therefore voluntarily chosen to be subject to the laws of Georgia. The aforesaid acts and practices of Kodak occurred in Georgia, were intended to injure, and as a foreseeable and direct consequence injured plaintiff Atlanta General in its trade and business in Georgia. Plaintiff is a citizen of Georgia, and Georgia has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

120. The aforesaid acts and practices of Kodak violate the unfair competition provisions of Georgia law (Georgia Code Annotated § 20-504).

### **Prayer for Relief**

WHEREFORE, as and for a Twelfth Claim for Relief, plaintiff Atlanta General prays this court to order, adjudge and decree that:

- A. Defendant Kodak has violated the aforesaid Georgia law;
- B. Plaintiff be awarded damages, when ascertained;
- C. Plaintiff be awarded reasonable attorneys' fees;
- D. Plaintiff recover interest on actual damages;
- E. Plaintiff recover costs of suit; and,
- F. Plaintiff be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

### **THIRTEENTH CLAIM FOR RELIEF (As to Plaintiff IOA)**

(New York General Business Law §§ 340 et seq.)

#### **Jurisdiction and Venue**

121. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C. §§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs. This claim arises out of the facts previously alleged in support of the First, Second, Third and Fourth Claims For Relief and therefore falls within the pendent jurisdiction of this court.

### Claim

122. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 2, 16 and 21 through 61, inclusive, of the First Claim for Relief; paragraphs 68 through 70 inclusive, of the Second Claim for Relief; paragraphs 77 through 79 inclusive, of the Third Claim for Relief; and paragraphs 86 through 88 inclusive, of the Fourth Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

123. Kodak has offices in and is qualified to do business in New York. Kodak does a substantial amount of business in New York, including substantial sales and a substantial amount of repair and service of Kodak micrographic and photocopy equipment. Kodak has therefore voluntarily chosen to be subject to the laws of New York. The aforesaid acts and practices of Kodak occurred in New York, were intended to injure, and as a foreseeable and direct consequence injured plaintiff IOA in its trade and business in New York. Plaintiff is a citizen of New York, and New York has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

124. The aforesaid acts and practices of Kodak violate the New York unfair competition laws. (New York General Business Law § 340 et seq.)

### Prayer for Relief

WHEREFORE, as and for a Thirteenth Claim for Relief, plaintiff IOA prays this court to order, adjudge and decree that:

A. Defendant Kodak has violated the aforesaid New York law;

B. Plaintiff be awarded damages, when ascertained, and that defendant Kodak pay plaintiff threefold the damages;

C. Plaintiff be awarded reasonable attorneys' fees;

D. Plaintiff recover interest on actual damages;

E. Plaintiff recover costs of suit; and,

F. Plaintiff be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

### FOURTEENTH CLAIM FOR RELIEF (As To Plaintiff Searle)

(Texas Business and Commerce Code §§ 1501 et seq. and 17.41 et seq.)

#### Jurisdiction and Venue

125. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C. §§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs. This claim arises out of the facts previously alleged in support of the First, Second, Third and Fourth Claims For Relief and therefore falls within the pendent jurisdiction of this court.

**Claim**

126. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 2, 17 and 21 through 61, inclusive, of the First Claim for Relief; paragraphs 68 through 70 inclusive, of the Second Claim for Relief; paragraphs 77 through 79 inclusive, of the Third Claim for Relief; and paragraphs 86 through 88 inclusive, of the Fourth Claim for Relief, with the same force and effect as if said paragraph were herein set forth in full.

127. Kodak has offices in and is qualified to do business in Texas. Kodak does a substantial amount of business in Texas, including substantial sales and a substantial amount of repair and service of Kodak micrographic and photocopy equipment. Kodak has therefore voluntarily chosen to be subject to the laws of Texas. The aforesaid acts and practices of Kodak occurred in Texas, were intended to injure, and as a foreseeable and direct consequence injured plaintiff Searle in its trade and business in Texas. Plaintiff is a citizen of Texas, and Texas has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

128. The aforesaid acts and practices of Kodak violate the Texas Free Enterprise and Antitrust Act of 1983 (Texas Business and Commerce Code § 15.01 et seq.), and The Texas Deceptive Trade Practices Act (Texas Business and Commercial Code § 17.41 et seq.)

**Prayer for Relief**

WHEREFORE, as and for a Fourteenth Claim for Relief, plaintiff Searle prays this court to order, adjudge and decree that:

A. Defendant Kodak has violated the aforesaid Texas laws;

B. Plaintiff be awarded damages, when ascertained, and that defendant Kodak pay plaintiff threefold the damages;

C. Plaintiff be awarded reasonable attorneys' fees;

D. Plaintiff recover interest on actual damages;

E. Plaintiff recover costs of suit; and,

F. Plaintiff be awarded injunctive relief to prevent and restrain defendant Kodak's unlawful actions and for such other and further relief as the court may deem just and proper.

**FIFTEENTH CLAIM FOR RELIEF  
(All Plaintiffs)**

**(Breach of Contract, Breach of Covenant of Good Faith)  
Jurisdiction and Venue**

129. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C. §§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs. This claim arises out of the facts previously alleged in support of the First, Second, Third and Fourth Claims For Relief and therefore falls within the pendent jurisdiction of this court.

### Claim

130. This claim is brought to recover damages sustained by plaintiffs as a result of breach of contract and of the covenant of good faith and fair dealing by defendant Kodak.

131. Plaintiffs incorporate herein by reference the allegations in paragraphs 2 through 61 inclusive of the First Claim for Relief; paragraphs 68 through 70 inclusive of the Second Claim for Relief; paragraphs 77 through 79 inclusive of the Third Claim for Relief; and, paragraphs 86 through 88 inclusive of the Fourth Claim for Relief, with the same force and effect as if said paragraphs were herein set forth in full.

132. Defendant Kodak has offices in and is qualified to do business in each of the states in which plaintiffs is incorporated and in which each has its principal place of business. Defendant Kodak does a substantial amount of business in each of these states including substantial sales and a substantial amount of repair and service of Kodak micrographic and photocopy equipment. Defendant has therefore voluntarily chosen to be subject to the laws of each of said states. Defendant Kodak, as hereinafter set forth, has intentionally breached its contractual relationships with plaintiffs and breached its covenant of good faith and fair dealing to plaintiffs and has thereby injured plaintiffs in each of said states. Since plaintiffs are citizens of each of said states, operating primarily in said states, each state has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

133. Plaintiffs contracted with defendant Kodak under written agreements of sale providing in relevant parts that Kodak would sell replacement parts to any party who intended to use them to repair Kodak equipment, and that Kodak would act in a fair and appropriate manner in discontinuing shipments of parts to any of its customers and revoking or modifying any of the terms of sale between plaintiffs and defendant Kodak.

134. Implied in the agreements between plaintiffs and Kodak was a covenant by defendant Kodak that it would act in good faith and deal fairly with plaintiffs and that Kodak would do nothing to interfere with the rights of plaintiffs to receive the benefits of the contract.

135. Defendant Kodak, in breach of its covenant of good faith and fair dealing, intentionally, maliciously, and oppressively refused and failed to sell parts for Kodak micrographic and photocopy equipment to plaintiffs, which parts were intended for the repair of Kodak equipment, or to exercise fair and appropriate judgment in revoking or modifying the terms of the sale and allocating distribution of said parts.

136. Plaintiffs have been damaged in an amount not presently ascertainable, and when said amount is ascertained plaintiffs will ask leave of court to amend this Complaint by inserting said sum herein.

137. The aforementioned breach of the covenant of good faith and fair dealing was done willfully and maliciously and with intent to injure and oppress plaintiffs and to damage the ability of plaintiffs to compete for customers with defendant Kodak and to put plaintiffs out of business and, by reason thereof, plaintiffs are entitled

to exemplary and punitive damages in the sum of ONE HUNDRED MILLION DOLLARS (\$100,000,000.00).

#### **Prayer for Relief**

WHEREFORE, as and for a Fifteenth Claim for Relief, plaintiffs pray this Court to order, adjudge and decree that:

- A. Defendant Kodak has breached its contract with plaintiffs and the implied covenant of good faith and fair dealing to plaintiffs;
- B. Plaintiffs be awarded compensating damages in an amount to be ascertained;
- C. Plaintiffs be awarded exemplary and punitive damages in the sum of ONE HUNDRED MILLION DOLLARS (\$100,000,000.00);
- D. Plaintiffs recover costs of suit; and,
- E. Plaintiffs be awarded such other and further relief as the Court may deem just and proper.

#### **SIXTEENTH CLAIM FOR RELIEF (All Plaintiffs)**

**(Interference With Contracts and Prospective Economic Advantage)**

#### **Jurisdiction and Venue**

138. The jurisdiction of this court is invoked and this action is instituted under the provisions of Sections 1331 and 1337 of Title 28, United States Code (28 U.S.C. §§ 1331 and 1337) and the doctrine of pendent jurisdiction. The matter in controversy exceeds the sum or value

of \$10,000.00, exclusive of interest and costs. This claim arises out of the facts previously alleged in support of plaintiffs' First, Second, Third, and Fourth Claims for Relief and therefore falls within the pendent jurisdiction of this court.

#### **Claim**

139. This action is brought to declare, to prevent and restrain, and to recover damages sustained by plaintiffs as a result of defendant's intentional conduct interfering with their existing contractual relationships and interfering with their prospective economic advantage.

140. Plaintiffs incorporate herein by reference the allegations in paragraphs 2 through 61 inclusive of the First Claim for Relief; paragraphs 68 through 70 inclusive of the Second Claim for Relief; paragraphs 77 through 79 inclusive of the Third Claim for Relief; and, paragraphs 86 through 88 inclusive of the Fourth Claim for Relief, with the same force and effect as though said paragraphs were herein set forth in full.

141. Defendant Kodak has offices in and is qualified to do business in each of the states in which plaintiffs is incorporated and in which each has its principal place of business. Defendant Kodak does a substantial amount of business in each of these states including substantial sales and a substantial amount of repair and service of Kodak micrographic and photocopy equipment. Defendant has therefore voluntarily chosen to be subject to the laws of each of said states. Defendant Kodak, as hereinafter set

forth, has intentionally interfered with plaintiffs' contractual relationships and interfered with plaintiffs' prospective economic advantage and has thereby injured plaintiffs in each of said states. Since plaintiffs are citizens of each of said states, operating primarily in said states, each state has an interest in the application of its laws to this controversy and there is no compelling reason for not applying said laws.

142. Defendant Kodak has engaged in the following intentional conduct with the purpose and effect of interfering with plaintiffs' existing contractual relationships and to interfere with plaintiffs' prospective economic advantage. These acts of Kodak include, but are not limited to:

A. Plaintiffs had existing contracts and potential economic relationships between themselves and numerous owners and users of Kodak micrographic and photocopy equipment. Defendant Kodak knew of the existence of these contracts and economic relationships. Defendant Kodak has disrupted the contracts and potential economic advantage of plaintiffs through the acts and policies of preventing plaintiffs from obtaining parts, of preventing repair and service on Kodak equipment and of otherwise foreclosing plaintiffs from the sale, repair and service of Kodak equipment.

B. Kodak has attempted through the acts and representations set forth herein to put plaintiffs out of business.

143. As a proximate result of the acts of defendant Kodak, plaintiffs have been damaged as hereinafter alleged.

144. Plaintiffs have been damaged in an amount not presently ascertainable, and when said amount is ascertained plaintiffs will ask leave of court to amend this Complaint by inserting said sum herein.

145. The aforementioned acts of defendant Kodak were done willfully and maliciously and with intent to injure and oppress plaintiffs with the intent of driving plaintiffs out of business and, by reason thereof, plaintiffs are entitled to exemplary and punitive damages in the sum of ONE HUNDRED MILLION DOLLARS (\$100,000,000.00).

146. Against the continuing violations of defendant Kodak, plaintiffs have no adequate remedy at law and defendant Kodak should be enjoined from further interference with the contractual relationships and prospective economic advantages of plaintiffs as hereinabove alleged.

#### Prayer for Relief

WHEREFORE, as and for a Sixteenth Claim For Relief, plaintiffs pray this Court to order, adjudge and decree that:

A. Defendant Kodak has violated plaintiffs' common law right to be free from intentional interference with its contractual relationships and intentional interference with its prospective economic advantage;

B. Plaintiffs be awarded damages, in an amount to be ascertained;

C. Plaintiffs be awarded exemplary and punitive damages in the sum of ONE HUNDRED MILLION DOLLARS (\$100,000,000.00);

D. Plaintiffs recover costs of suit; and,

E. Plaintiffs be awarded such other and further relief as the court may deem just and proper.

Dated: April 14, 1987

LAW OFFICES OF  
JAMES A. HENNEFER

By: /s/ James A. Hennefer  
James A. Hennefer  
Attorneys for Plaintiffs

Plaintiffs demand a trial by jury.

Dated: April 14, 1987

LAW OFFICES OF  
JAMES A. HENNEFER

By: /s/ James A. Hennefer  
James A. Hennefer  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

|   |  |
|---|--|
| IMAGE TECHNICAL SERVICES, INC., et al., | ) No. C 87 1686 WWS  |
| Plaintiffs,                             | ) ANSWER OF DEFENDANT EASTMAN KODAK CO. TO COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF |
| v.                                      | )  |
| EASTMAN KODAK COMPANY,                  | )  |
| Defendant.                              | )  |

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Defendant Eastman Kodak Company ("Kodak") answers plaintiffs' Complaint for Damages and Injunctive Relief (the "Complaint") as follows:

1. Kodak denies each and every allegation contained in paragraph 1 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 1 of the Complaint.
2. Kodak denies each and every allegation contained in paragraph 2 of the Complaint, except to admit that Kodak is qualified to do business, does substantial

business, and maintains offices within the Northern District of California.

3. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint, and on that basis, denies such allegations.

4. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint, and on that basis, denies such allegations.

5. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint, and on that basis, denies such allegations.

6. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint, and on that basis, denies such allegations.

7. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint, and on that basis, denies such allegations.

8. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint, and on that basis, denies such allegations.

9. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint, and on that basis, denies such allegations.

10. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and on that basis, denies such allegations.

11. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, and on that basis, denies such allegations.

12. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, and on that basis, denies such allegations.

13. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and on that basis, denies such allegations.

14. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, and on that basis, denies such allegations.

15. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, and on that basis, denies such allegations.

16. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint, and on that basis, denies such allegations.

17. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations

contained in paragraph 17 of the Complaint, and on that basis, denies such allegations.

18. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint, and on that basis, denies such allegations.

19. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint, and on that basis, denies such allegations.

20. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint, and on that basis, denies such allegations.

21. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint, and on that basis, denies such allegations.

22. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint, and on that basis, denies such allegations.

23. Kodak denies each and every allegation contained in paragraph 23 of the Complaint, except to allege that it can neither admit nor deny plaintiffs' allegations concerning the manufacture and distribution of "[m]ost parts for Kodak micrographic and photocopy equipment" because that phrase may be susceptible of multiple interpretations, and is not defined by plaintiffs. As stated in the Complaint, said phrase is unintelligible.

24. Kodak admits that it is a New Jersey corporation, that it maintains its principal place of business in Rochester, New York, and that it manufactures, sells and services products including new and used micrographic and photocopy equipment, and supplies and parts for that equipment. Kodak denies each and every remaining allegation contained in paragraph 24 of the Complaint, except to allege that it can neither admit nor deny plaintiffs' allegations concerning the manufacture or publication of products on an "original equipment manufacture basis," and allegations concerning "any appreciable volume or other basis," because these phrases are susceptible of multiple interpretations, and are not defined by plaintiffs. As stated in the Complaint, said phrases are unintelligible.

25. Kodak denies each and every allegation contained in paragraph 25 of the Complaint, except to admit that Kodak's Customer Equipment Services Division performs repairs and service on Kodak micrographic and photocopying equipment on both a service contract and per call basis.

26. Kodak denies paragraph 26 of the Complaint in its entirety.

27. Kodak denies each and every allegation contained in paragraph 27 of the Complaint, except to admit that its products are of excellent quality and reputation.

28. Kodak denies paragraph 28 of the Complaint in its entirety.

29. Kodak denies each and every allegation contained in paragraph 29 of the Complaint, except to admit

that Kodak employs personnel with high technical expertise in the manufacture and repair of its products.

30. Kodak denies paragraph 30 of the Complaint in its entirety.

31. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Complaint, and on that basis, denies such allegations.

32. Kodak denies paragraph 32 in its entirety except to admit that the written Terms of Sale applicable to the purchase of Kodak products in November 1985 speak for themselves.

33. Kodak denies paragraph 33 of the Complaint in its entirety.

34. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint, and on that basis, denies such allegations.

35. Kodak denies paragraph 35 of the Complaint in its entirety.

36. Kodak denies paragraph 36 of the Complaint in its entirety.

37. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint, and on that basis, denies such allegations.

38. Kodak denies each and every allegation contained in paragraph 38 of the Complaint, except to admit

that in or following April 1985, Kodak established a business practice pursuant to which parts for newly introduced micrographic products were made available only to Kodak operating units, government customers and Kodak customers.

39. Kodak denies paragraph 39 of the Complaint in its entirety.

40. Kodak denies paragraph 40 of the Complaint in its entirety.

41. Kodak denies each and every allegation contained in paragraph 41 of the Complaint, except to admit that certain plaintiffs may have placed orders for Kodak parts since July 1985 or July 1986.

42. Kodak denies paragraph 42 of the Complaint in its entirety.

43. Kodak denies paragraph 43 of the Complaint in its entirety.

44. Kodak denies paragraph 44 of the Complaint in its entirety.

45. Kodak denies paragraph 45 of the Complaint in its entirety.

46. Kodak denies paragraph 46 of the Complaint in its entirety.

47. Kodak denies paragraph 47 of the Complaint in its entirety.

48. Kodak denies paragraph 48 of the Complaint in its entirety.

49. Kodak denies paragraph 49 of the Complaint in its entirety.

50. Kodak denies paragraph 50 of the Complaint in its entirety.

51. Kodak denies paragraph 51 of the Complaint in its entirety.

52. Kodak denies paragraph 52 of the Complaint in its entirety.

53. Kodak denies paragraph 53 of the Complaint in its entirety.

54. Kodak denies paragraph 54 of the Complaint in its entirety.

55. Kodak denies paragraph 55 of the Complaint in its entirety.

56. Kodak denies paragraph 56 of the Complaint in its entirety.

57. Kodak denies paragraph 57 of the Complaint in its entirety.

58. Kodak denies paragraph 58 of the Complaint in its entirety.

59. Kodak denies paragraph 59 of the Complaint in its entirety.

60. Kodak denies paragraph 60 of the Complaint in its entirety.

61. Kodak denies paragraph 61 of the Complaint in its entirety.

62. Kodak denies each and every allegation contained in paragraph 62 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 62 of the Complaint.

63. Kodak incorporates by reference paragraph 2 of this Answer.

64. Kodak incorporates by reference paragraphs 3 through 23 of this Answer.

65. Kodak incorporates by reference paragraphs 24 and 25 of this Answer.

66. Kodak incorporates by reference paragraphs 26 through 37 of this Answer.

67. Kodak incorporates by reference paragraphs 38 through 59 of this Answer.

68. Kodak denies paragraph 68 of the Complaint in its entirety.

69. Kodak denies paragraph 69 of the Complaint in its entirety.

70. Kodak denies paragraph 70 of the Complaint in its entirety.

71. Kodak denies each and every allegation contained in paragraph 71 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 71 of the Complaint.

72. Kodak incorporates by reference paragraph 2 of this Answer.

73. Kodak incorporates by reference paragraphs 3 through 23 of this Answer.

74. Kodak incorporates by reference paragraphs 24 and 25 of this Answer.

75. Kodak incorporates by reference paragraphs 26 through 37 of this Answer.

76. Kodak incorporates by reference paragraphs 38 through 59 of this Answer.

77. Kodak denies paragraph 77 of the Complaint in its entirety.

78. Kodak denies paragraph 78 of the Complaint in its entirety.

79. Kodak denies paragraph 79 of the Complaint in its entirety.

80. Kodak denies each and every allegation contained in paragraph 80 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 80 of the Complaint.

81. Kodak incorporates by reference paragraph 2 of this Answer.

82. Kodak incorporates by reference paragraphs 3 through 23 of this Answer.

83. Kodak incorporates by reference paragraphs 24 and 25 of this Answer.

84. Kodak incorporates by reference paragraphs 26 through 37 of this Answer.

85. Kodak incorporates by reference paragraphs 38 through 59 of this Answer.

86. Kodak denies paragraph 86 of the Complaint in its entirety.

87. Kodak denies paragraph 87 of the Complaint in its entirety.

88. Kodak denies paragraph 88 of the Complaint in its entirety.

89. Kodak denies each and every allegation contained in paragraph 89 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 89 of the Complaint.

90. Kodak incorporates by reference paragraphs 1 through 3, 9, and 19 through 61 of this Answer.

91. Kodak denies each and every allegation contained in paragraph 91 of the Complaint, except to admit that it has offices in, is qualified to do business in, and does a substantial amount of business in California.

92. Kodak denies paragraph 92 of the Complaint in its entirety.

93. Kodak denies each and every allegation contained in paragraph 93 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 93 of the Complaint.

94. Kodak incorporates by reference paragraphs 1, 2, 4, 14, 21 through 61, 68 through 70, 77 through 79, and 86 through 88 of this Answer.

95. Kodak denies each and every allegation contained in paragraph 95 of the Complaint, except to admit that it has offices in, is qualified to do business in, and does a substantial amount of business in New Jersey.

96. Kodak denies paragraph 96 of the Complaint in its entirety.

97. Kodak denies each and every allegation contained in paragraph 97 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 97 of the Complaint.

98. Kodak incorporates by reference paragraphs 1, 2, 13, 15, 21 through 61, 68 through 70, 77 through 79, and 86 through 88 of this Answer.

99. Kodak denies each and every allegation contained in paragraph 99 of the Complaint, except to admit that it has offices in, is qualified to do business in, and does a substantial amount of business in Missouri.

100. Kodak denies paragraph 100 of the Complaint in its entirety.

101. Kodak denies each and every allegation contained in paragraph 101 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 101 of the Complaint.

102. Kodak incorporates by reference paragraphs 1, 2, 10, 18, 21 through 61, 68 through 70, 77 through 79, and 86 through 88 of this Answer.

103. Kodak denies each and every allegation contained in paragraph 103 of the Complaint, except to admit that it has offices in, is qualified to do business in, and does a substantial amount of business in Minnesota.

104. Kodak denies paragraph 104 of the Complaint in its entirety.

105. Kodak denies each and every allegation contained in paragraph 105 of the Complaint, except to admit

that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 105 of the Complaint.

106. Kodak incorporates by reference paragraphs 1, 2, 11, 12, 21 through 61, 68 through 70, 77 through 79, and 86 through 88 of this Answer.

107. Kodak denies each and every allegation contained in paragraph 107 of the Complaint, except to admit that it has offices in, is qualified to do business in, and does a substantial amount of business in Colorado.

108. Kodak denies paragraph 108 of the Complaint in its entirety.

109. Kodak denies each and every allegation contained in paragraph 109 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 109 of the Complaint.

110. Kodak incorporates by reference paragraphs 1, 2, 5, 21 through 61, 68 through 70, 77 through 79, and 86 through 88 of this Answer.

111. Kodak denies each and every allegation contained in paragraph 111 of the Complaint, except to admit that it has offices in, is qualified to do business in, and does a substantial amount of business in Pennsylvania.

112. Kodak denies paragraph 112 of the Complaint in its entirety.

113. Kodak denies each and every allegation contained in paragraph 113 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 113 of the Complaint.

114. Kodak incorporates by reference paragraphs 1, 2, 7, 21 through 61, 68 through 70, 77 through 79, and 86 through 88 of this Answer.

115. Kodak denies each and every allegation contained in paragraph 115 of the Complaint, except to admit that it has offices in, is qualified to do business in, and does a substantial amount of business in Illinois.

116. Kodak denies paragraph 116 of the Complaint in its entirety.

117. Kodak denies each and every allegation contained in paragraph 117 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 117 of the Complaint.

118. Kodak incorporates by reference paragraphs 1, 2, 8, 21 through 61, 68 through 70, 77 through 79, and 86 through 88 of this Answer.

119. Kodak denies each and every allegation contained in paragraph 119 of the Complaint, except to admit that it has offices in, is qualified to do business in, and does a substantial amount of business in Georgia.

120. Kodak denies paragraph 120 of the Complaint in its entirety.

121. Kodak denies each and every allegation contained in paragraph 121 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 121 of the Complaint.

122. Kodak incorporates by reference paragraphs 1, 2, 16, 21 through 61, 68 through 70, 77 through 79, and 86 through 88 of this Answer.

123. Kodak denies each and every allegation contained in paragraph 123 of the Complaint, except to admit that it has offices in, is qualified to do business in, and does a substantial amount of business in New York.

124. Kodak denies paragraph 124 of the Complaint in its entirety.

125. Kodak denies each and every allegation contained in paragraph 125 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 125 of the Complaint.

126. Kodak incorporates by reference paragraphs 1, 2, 17, 21 through 61, 68 through 70, 77 through 79, and 86 through 88 of this Answer.

127. Kodak denies each and every allegation contained in paragraph 127 of the Complaint, except to admit that it has offices in, is qualified to do business in, and does a substantial amount of business in Texas.

128. Kodak denies paragraph 128 of the Complaint in its entirety.

129. Kodak denies each and every allegation contained in paragraph 129 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 129 of the Complaint.

130. Kodak denies paragraph 130 of the Complaint in its entirety.

131. Kodak incorporates by reference paragraphs 2 through 61, 68 through 70, 77 through 79, and 86 through 88 of this Answer.

132. Kodak denies each and every allegation contained in paragraph 132 of the Complaint, except to admit that it has offices in, is qualified to do business in, and does a substantial amount of business in each of the states in which plaintiffs purport to be incorporated and in which each plaintiff purports to maintain its principal place of business.

133. Kodak denies paragraph 133 of the Complaint in its entirety.

134. Kodak denies paragraph 134 of the Complaint in its entirety.

135. Kodak denies paragraph 135 of the Complaint in its entirety.

136. Kodak denies paragraph 136 of the Complaint in its entirety.

137. Kodak denies paragraph 137 of the Complaint in its entirety.

138. Kodak denies each and every allegation contained in paragraph 138 of the Complaint, except to admit that plaintiffs purport to bring this action pursuant to the provisions set forth in paragraph 138 of the Complaint.

139. Kodak denies paragraph 139 of the Complaint in its entirety.

140. Kodak incorporates by reference paragraphs 2 through 61, 68 through 70, 77 through 79, and 86 through 88 of this Answer.

141. Kodak denies each and every allegation contained in paragraph 141 of the Complaint, except to admit

that it has offices in, is qualified to do business in, and does a substantial amount of business in each of the states in which plaintiffs purport to be incorporated and in which each plaintiff purports to maintain its principal place of business.

142. Kodak denies paragraph 142 of the Complaint in its entirety.

143. Kodak denies paragraph 143 of the Complaint in its entirety.

144. Kodak denies paragraph 144 of the Complaint in its entirety.

145. Kodak denies paragraph 145 of the Complaint in its entirety.

146. Kodak denies paragraph 146 of the Complaint in its entirety.

#### FIRST AFFIRMATIVE DEFENSE

The Complaint, and each count of it, fails to state a claim upon which relief may be granted.

#### SECOND AFFIRMATIVE DEFENSE

Each of the claims of the Complaint, in whole or in part, is barred by the applicable statute of limitations.

#### THIRD AFFIRMATIVE DEFENSE

Plaintiffs are barred by laches from asserting any of the claims raised in the Complaint.

#### FOURTH AFFIRMATIVE DEFENSE

Plaintiffs, and each of them, have not been injured in their business or property within the meaning of Section 4 of the Clayton Act, 15 U.S.C. § 15.

#### FIFTH AFFIRMATIVE DEFENSE

Plaintiffs, and each of them, failed to mitigate any damages purportedly suffered as a result of the conduct alleged in the Complaint.

#### SIXTH AFFIRMATIVE DEFENSE

Plaintiffs, and each of them, are wrongfully attempting to interfere, and are interfering, with the contractual relations between Kodak and purchasers of Kodak parts and service.

#### SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs, and each of them, are knowingly and wrongfully attempting to interfere, and are interfering, with prospective beneficial economic relationships of Kodak.

#### EIGHTH AFFIRMATIVE DEFENSE

Kodak's policies regarding the sale of equipment, supplies, and replacement parts for Kodak micrographic and photocopy equipment are reasonable, are necessary to promote interbrand competition, and are lawful.

#### NINTH AFFIRMATIVE DEFENSE

If any plaintiff has suffered or will suffer damages, any damages said plaintiff has suffered or will suffer were not caused by Kodak but are the result of the conduct of said plaintiff, including, without limitation, said plaintiff's undertaking contractual obligations to provide to customers Kodak supplies and parts that said plaintiff at all times knew it would be unable to purchase from Kodak.

#### TENTH AFFIRMATIVE DEFENSE

If, as alleged in the Complaint, plaintiffs, or any of them, have purchased supplies and replacement parts from Kodak for resale, plaintiffs have thereby deliberately, fraudulently and in bad faith concealed from Kodak the material fact that they intended to resell the supplies and replacement parts purchased from Kodak, knowing that if that fact had been revealed, Kodak would not have sold them the supplies and parts requested. Plaintiffs have thereby also fraudulently, falsely and in bad faith represented and held themselves out to the public as able and entitled to purchase Kodak supplies and replacement parts from Kodak for resale to plaintiffs' customers, at all times knowing that said representations were false. Plaintiffs are not entitled to any relief at all, and to equitable relief in particular, because of their inequitable conduct in the above-described transactions.

WHEREFORE, Kodak prays for judgment with respect to plaintiffs' Complaint in this action as follows:

- (1) That this Court dismiss the Complaint with prejudice;
- (2) That defendants be awarded their costs and expenses including attorneys' fees incurred by reason of this action; and
- (3) That this Court grant such other and further relief as it may deem just and proper.

Dated: May 12, 1987.

McCUTCHEN, DOYLE,  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IMAGE TECHNICAL SERVICES, INC., et al.,  
Plaintiffs,  
v.  
EASTMAN KODAK COMPANY, Defendant.

) No. C 87 1686 WWS  
) MEMORANDUM OF  
) POINTS AND  
) AUTHORITIES IN  
) SUPPORT OF  
) DEFENDANT'S  
) MOTION FOR  
) SUMMARY  
) JUDGMENT  
)  
) Date: September 11,  
) 1987  
) Time: 9:00 a.m.

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## I. INTRODUCTION

This action challenges under the antitrust laws two business practices of the defendant Eastman Kodak Company.

First and foremost, plaintiffs challenge a Kodak business practice that limits the sale of replacement parts for Kodak's copier-duplicators and micrographic equipment (the "parts policy"). Kodak's policy is to sell copier parts and Parts for its newer micrographic equipment only to direct Kodak equipment customers. It also places lesser restrictions on sales of parts for older micrographic equipment to entities that are not direct equipment customers.

Plaintiffs are so-called "independent service organizations" ("ISOs"). ISOs sell service on Kodak copiers and micrographic equipment. Plaintiffs do not manufacture

their own parts, but try to obtain parts directly from Kodak. In essence, plaintiffs seek to free-ride on Kodak's investment in equipment manufacturing. Pursuant to the parts policy, Kodak restricts the sale of parts to ISOs and other non-direct equipment customers.

Second, Plaintiffs challenge a Kodak policy on servicing used Kodak brand copiers and micrographic equipment that are sold by refurbishers and used equipment brokers (the "used equipment policy"). Kodak will not offer a service contract on that equipment unless it is first inspected and brought up to basic performance standards by Kodak at the customer's expense.

Both policies are challenged pursuant to every possible antitrust theory. Kodak's actions are alleged to constitute actual and attempted monopolization of various markets, unlawful tying arrangements, and conspiracies in restraint of trade, thus violating Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 & 2, and Section 3 of the Clayton Act, 15 U.S.C. § 14. Also, plaintiffs allege violations of numerous state antitrust and unfair competition statutes and advance various state common law theories of recovery.

Kodak is moving for summary judgment now, before the plaintiffs have initiated discovery, because the material facts with respect to the nature of the challenged business practices and their effect on competition are not seriously disputed. This is not a case in which there can be any doubt about what happened or what Kodak's policies mean. Kodak's declarations openly state its policies, which, with relatively minor corrections, are as the Complaint describes them.

In other words, the purpose of this summary judgment motion is not to say "No, we didn't do it." For the most part, Kodak does refuse to sell replacement parts to plaintiffs, and Kodak does place conditions on servicing resold Kodak equipment. The purpose of this motion is to say "Yes, these are our business practices, and they are perfectly lawful." That presents issues of law that are appropriately decided on summary judgment.

The governing law is also not subject to serious dispute. The parts policy is lawful under the controlling authorities of *Dimidowich v. Bell & Howell*, 803 F.2d 1473 (9th Cir. 1986), modified, 810 F.2d 1517 (1987), *Calculators Hawaii, Inc. v. Brandt, Inc.*, 724 F.2d 1332 (9th Cir. 1983), and *Bushie v. Stenocord Corp.*, 460 F.2d 116 (9th Cir. 1972). Those cases stand for the rule that an equipment manufacturer like Kodak, which lacks market power in the relevant equipment markets, may for valid business reasons unilaterally decide not to make replacement parts available to anyone it chooses – and especially to free-riders like plaintiffs. Similarly, the used equipment policy is lawful because the antitrust laws do not force Kodak to service for a set fee equipment of an unknown condition sold by someone other than itself.

## II. THE FACTS

### A. The Parties

The eighteen plaintiffs in this action allege that they engage in the business of repairing and servicing Kodak copiers and micrographic equipment and the business of buying, reconditioning and selling used Kodak copiers

and micrographic equipment. (Complaint ¶ 21) They do not manufacture the replacement parts which they use to service and refurbish that equipment. Rather, they claim a right to purchase parts, which they broadly define to include tools, test equipment, supplies, and service manuals, from the only company which they identify as their competitor, Kodak. (Complaint ¶ 22) Because they refuse to manufacture any parts or look to alternative sources, plaintiffs contend they cannot operate their businesses unless Kodak sells them parts. (*Id.*)

Kodak, headquartered in Rochester, New York, manufactures photographic equipment and supplies, business equipment and other products. The Kodak Business Units which are relevant to this case are the Copy Products Division and the Business Imaging Systems Division ("BISD"). The Copy Products Division manufactures and markets a line of copier-duplicators sold under the trademark "Ektaprint." (Murray Decl. ¶ 1) BISD manufactures and markets business imaging equipment, principally micrographic equipment such as microfilmers, reader-printers, and computer assisted retrieval systems. (Lacy Decl. ¶ 3) Also relevant to this case is Kodak's Customer Equipment Services Division ("CESD"). It does not make or market any products, but provides the after-sale service for various Kodak Business Units, including Copy Products and BISD. (Lacy Decl. ¶ 12)

## B. The Market Setting

### 1. The Copier Industry

Kodak's Copy Products Division is a participant in the plain paper copier industry. Its Ektaprint copier-duplicators perform the same photocopy function as copiers manufactured by a long list of major firms, including Xerox, the industry giant, IBM, and Japanese firms such as Savin, Canon, Ricoh and Minolta. Kodak's copiers are sold in direct competition with copiers manufactured and sold by these and other firms. (See the Declaration of Michael J. Murray at ¶¶ 3-16 for a detailed description of the copier-duplicator industry.)

Kodak is not a monopolist and does not have any market power in the copier-duplicator industry. In fact, Kodak is not even the largest, let alone a dominant, firm in the industry. No matter how the copier-duplicator market is defined — even if, to narrow the market artificially, alternative reproduction technologies are ignored and copiers are divided into small speed and volume segments — Kodak's market share falls far short of the minimum required to prove actual or potential market power. (Murray Decl. ¶¶ 8-10) Kodak's share of the total plain paper copier market is less than 5 percent. (Murray Decl. Exs. 1, 2) In the high-volume end of that market, the segment in which Kodak is most active, Kodak's segment share percentage is in the twenties or low thirties, depending on how the segment is defined. (Murray Decl. ¶ 9) In contrast, Xerox's comparable share is in the mid-

forties to high-fifties, depending on the segment definition. (Murray Decl. ¶¶ 8-9) Clearly Kodak is no monopolist, nor is there any danger of it becoming one.

### 2. The Information And Image Management Industry

BISD is a participant in what is generally called the information and image management industry. It manufactures and sells business equipment that is used to manage image information, typically words recorded on paper, by capturing and storing it at very high densities, and retrieving it as needed. (Lacy Decl. ¶ 4) Historically, BISD's main hardware offering has been micrographic equipment such as microfilmers and reader-printers. Today, BISD also manufactures Computer Output Microform ("COM") recorders, which are data processing peripherals that record computer generated data onto microfilm; Computer Assisted Retrieval ("CAR") systems, which utilize computers to locate and retrieve micrographic images; and supplies, such as microfilm, chemicals and paper. (Lacy Decl. ¶ 3)

BISD is not a monopolist and does not have market power in any micrographics or image management market. First, BISD's products are a substitute for other means to store and retrieve information that is in image form, the most important of which is the maintenance of ordinary files of hard copy paper documents. (Lacy Decl. ¶ 4) These alternatives to business imaging equipment prevent Kodak and other business imaging equipment sellers from exerting any market power. (Lacy Decl. ¶ 5) Moreover, Kodak faces strong competition from imaging

equipment makers such as Canon, Minolta, 3M and Bell and Howell. Kodak's share of all U.S. sales of business imaging equipment is less than 20 percent. (Lacy Decl. ¶ 6) Given the competition Kodak faces from business imaging equipment makers and the customer's option to employ hard copy or other file management techniques, it is impossible to conclude that BISD has or could acquire market power in any equipment market.

### 3. Plaintiff's Market Allegations

Incredibly, plaintiffs deny that there is any competition between Kodak and other equipment manufacturers. Their Complaint alleges that "Kodak micrographic and photocopy equipment are unique products" that are sold in a market unto themselves. (Complaint ¶¶ 26-28) In other words, plaintiffs actually suggest, for example, that a Xerox copier and a Kodak copier that perform the same function, have almost the exact same features, and are comparably priced do not compete.

This specious claim is the foundation of plaintiffs' antitrust theory, for it allows plaintiffs to contend that Kodak has monopoly power in allegedly relevant markets consisting of nothing but its own micrographic and photocopy equipment. (Complaint ¶ 29) That, in turn, allows plaintiffs to argue that Kodak leveraged power from its "brand monopoly" in order to monopolize or attempt to monopolize two other markets: (1) a market for the "repair and service of Kodak micrographic and photocopy equipment" (Complaint ¶ 29); and (2) a market for "the sale of used and reconditioned Kodak micrographic and photocopy equipment" (Complaint ¶ 54). Denying

the existence of interbrand equipment competition is thus critical to plaintiffs' case because without that foundation Kodak admittedly has no power to leverage. However, if there is interbrand equipment competition, plaintiffs' case collapses: the only group of customers from which Kodak could try to extract monopoly profits, Kodak equipment buyers, could easily thwart any such attempt by switching to Xerox, IBM, Canon, Bell & Howell, 3M or some other manufacturer's equipment.

The facts stated in Kodak's declarations establish what is common knowledge to anyone even vaguely familiar with these industries: that Kodak is but one competitor in highly competitive interbrand equipment markets. There can be no genuine dispute about that, and accordingly, whether or not there are also "service" and "used equipment" markets, there can be no dispute that Kodak's challenged business practices could not have had any anticompetitive effects on Kodak's or plaintiffs' customers.

### C. The Challenged Business Practices

So far we have spoken of two challenged business practices: the parts policy and the used equipment policy. Since Copy Products and BISD have slightly different variants of these policies, we describe each Division's practice separately.

#### 1. The Copy Products Parts Policy

This is the simplest policy in this case. It is Kodak's business practice to sell parts, publications and tools for

the repair and maintenance of its copiers only to direct copier customers. Kodak does not knowingly sell parts to ISOs or other persons engaged in servicing Kodak copiers owned by others, or to persons who wish to service Kodak copiers they have purchased from sources other than Kodak. (Murray Decl. ¶ 23)

This parts policy has been in effect ever since Kodak entered the copier-duplicator business in 1975. Kodak has always marketed all of its copiers, accessories, supplies and service directly to customers. It has not designated dealers, distributors, resellers, or service agents for those products. (Murray Decl. ¶ 24) The allegation in the Complaint that "[p]rior to July 1985, Kodak . . . sold parts for all Kodak photocopy equipment to plaintiffs" (Complaint ¶ 34) is wrong, at least if that is meant to imply that Kodak sold plaintiffs parts so that they could service Kodak copiers owned by other parties. (Murray Decl. ¶ 24) Kodak has never knowingly sold copier parts to anyone who would use those parts to service someone else's Kodak copier.

## 2. The Copy Products Used Equipment Policy

Since firms like the plaintiffs began selling used Kodak copiers, Kodak has received requests to service those copiers under Kodak Equipment Maintenance Agreements ("EMAs"). An EMA is a service contract. Under it Kodak agrees to do whatever necessary to keep the equipment running in exchange for a set fee. (Gross Decl. ¶ 2) Since Kodak has no contractual relationship with any resellers, it is not obligated to service copiers they sell, particularly under an EMA. However, Kodak

will do so if the copier is already or can be brought up to basic performance standards.<sup>1</sup> (Murray Decl. ¶ 33) Accordingly, if asked to service such a copier, Kodak's policy is to first insist on the right to inspect it, for which a fee is charged. If the copier is already up to standards, Kodak will offer an EMA. If not, Kodak will make the necessary repairs, but, of course, will charge for the needed work. Then the copier can be put under an EMA. (Murray Decl. ¶ 23) (Attached as Exhibits 7 and 8 to the Murray Decl. are copies of two memoranda explaining this policy in detail.)

## 3. The BISD Parts Policy

The BISD parts policy is somewhat more complicated than its Copy Products analogue because there are circumstances under which Kodak will sell the plaintiffs parts.

The relevant business practice was adopted by Kodak in April 1985, and distinguishes between "new products" and "older products" as of that date. (The April 12, 1985 memorandum reflecting the policy is Exhibit 1 to the Gross Declaration.) Historically, Kodak sold micrographic equipment parts to anyone, including plaintiffs. Accordingly, Kodak decided to phase in its new parts policy by distinguishing between parts for older and newer products. With respect to older products, Kodak's policy was

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<sup>1</sup> Alternatively, Kodak offers "per call" service to owners of these copiers without any requirement to inspect and bring up to standards. (Murray Decl. Ex. 8, p.4) "Per call" service charges the customer for parts and labor directly.

(and is) to continue selling such parts to anyone, including plaintiffs. (Lacy Decl. ¶ 22; Lorenzen Decl. ¶ 4) However, if there is a shortage of a part, orders from ISOs are filled only after Kodak's and its direct equipment customers' needs have been met. (Lorenzen Decl. ¶ 6) In addition, certain "all time" parts — parts as to which Kodak has placed a final order with its supplier intended to last for the life of the equipment, and which cannot be ordered again — are often saved for Kodak's customers and are not sold to ISOs. (Lorenzen Decl. ¶ 10)

With respect to newer product parts (beginning with the KODAK RELIANT Intelligent Microfilmer 1000), BISD adopted the Copy Products parts policy: parts for new products are made available only to direct equipment customers. (Lacy Decl. ¶ 22)

#### 4. The BISD Used Equipment Policy

The BISD used equipment policy is exactly like the analogous Copy Products policy. It provides that before Kodak will place used equipment of an unknown condition under an EMA, it must be inspected and, if necessary, repaired. (Lacy Decl. ¶ 23)

#### D. The Business Reasons For Kodak's Practices

The declarations filed in support of this motion detail the business reasons for the challenged practices. They are summarized briefly here. Since Copy Products' and BISD's policies are similarly motivated, the business reasons are discussed by policy rather than by division.

#### 1. The Parts Policies

There are three main reasons for the parts policies:

First, the policies promote interbrand equipment competition. Kodak views exceptional factory service as one component of the total product by which it competes against Xerox, Canon, IBM, Bell and Howell, 3M and its other equipment competitors. It views direct responsibility for service as key to its competitive success.

Second, making and stocking parts for independent service organizations adds to Kodak's inventory costs, with no benefit and with tangible detriment to Kodak.

Third, Kodak believes that if firms like the plaintiffs wish to compete against it, they should be required to invest in the resources needed to do so and should not be allowed to free-ride on Kodak's investment in these businesses for the sole purpose of taking revenues away from Kodak.

##### a. Promoting Interbrand Competition

As far as Kodak is concerned, it does not compete in any service markets as alleged by plaintiffs. Rather, it manufactures and sells copiers and imaging equipment. Offering service is simply part of offering equipment. Kodak offers service because its equipment, like any sophisticated hardware, breaks down occasionally and requires maintenance regularly. (Murray Decl. ¶ 13; Lacy Decl. ¶ 11) Customers buy Kodak equipment to get a job done — to make copies or manage their files — and unless it is serviced, they are deprived of the benefits of

that equipment. Good service keeps the equipment running and the customer satisfied. Good service enhances Kodak's ability to sell equipment. (Murray Decl. ¶ 13; Lacy Decl. ¶ 12)

In marketing their products, both Copy Products and BISD stress Kodak's commitment to outstanding service. Their advertisements provide visible proof. Discussed in and attached to the Murray and Lacy declarations are examples of recent Kodak advertisements that show potential customers the advantage of using Kodak equipment because Kodak provides the best service in the business.<sup>2</sup> (Murray Decl. ¶¶ 17-22; Lacy Decl. ¶¶ 19-21) Further evidence of Kodak's commitment to service is the fact that surveys among both the copier and micrographic equipment users consistently rate Kodak service number one in customer satisfaction. Kodak heavily advertises that fact in marketing its copiers and micrographic equipment against its competitors. (Murray Decl. ¶ 19; Lacy Decl. ¶ 20)

The relationship of service to the underlying equipment offering was at the heart of Kodak's decisions to adopt the challenged parts policies. Indeed, the main reason that Kodak adopted the copier parts policy back in 1975 was to bolster its emphasis on quality service as part of its basic business strategy for marketing its copiers.

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<sup>2</sup> The thrust of all of these advertisements is that when someone buys Kodak equipment, they get "more than just equipment" (see Exhibit 2 to Lacy Decl.); they get superlative service that translates into better productivity. One of Kodak's advertising campaigns summed up this theme with what was dubbed "The Kodak Advantage" — "leading technology, proven reliability and the best service in the business." (Murray Decl. ¶ 22 & Ex. 4)

(Murray Decl. ¶ 26) The same consideration influenced BISD's decision to adopt a modified parts policy in April 1985. (Lacy Decl. ¶ 25) By then, ISOs were active in the micrographic industry, primarily servicing older, less sophisticated reader-printers. But at that time, Kodak's new equipment offerings were undergoing a rapid advance, especially relating to the use of computerized document retrieval systems. (Lacy Decl. ¶ 25) Consequently, Kodak felt that even though it had sold parts on its older micrographic equipment in the past, and thereby inadvertently lent a hand to the ISOs, it was inappropriate to make parts available on the newer, more sophisticated products that were forthcoming.

The parts policies have also been maintained because Kodak believes that dividing responsibility for product reliability between itself and an ISO damages Kodak's relationship with its direct equipment customers. This happens in two ways. First, when an ISO has replaced Kodak service with a particular customer, Kodak loses the day to day contact with the customer that is crucial to keeping the customer satisfied and learning of potential new sales opportunities. (Lacy Decl. ¶ 27; Murray Decl. ¶ 28) But even more important, divided responsibility inevitably leads to "fingerpointing" whenever an ISO is unable to repair a problem. Wanting to deflect the blame away from themselves, ISOs tend to blame Kodak for the problem, even if it is the result of improper diagnosis, maintenance or repair. (Murray Decl. ¶ 30; Lacy Decl. ¶ 27) Kodak has no opportunity to respond; it may never even hear of the problem. But the customer's image of Kodak is tarnished and that hurts Kodak when the customer has future equipment needs. Kodak does not want

to encourage even the possibility of that happening by fostering the efforts of ISOs.

Thus, Kodak's parts policies promote competition by increasing Kodak's competitiveness against its many domestic and Japanese competitors.

#### b. Reducing Inventories

A second reason for the parts policies is to reduce Kodak's parts inventories and thereby reduce Kodak's costs. This was the main reason that Kodak changed its policy with respect to older micrographic parts, it figured prominently in the decision not to sell newer micrographic parts, and it supports continuation of the copier parts policy.

Reducing inventory costs was the direct catalyst for BISD's parts policy. (Lacy Decl. ¶ 29; Gross Decl. ¶ 6) In early 1985, Kodak's management directed all of the company's divisions to improve their return on assets. CESD, the division that services Kodak's copiers and micrographic equipment, had only one substantial physical asset, its parts inventory. However, that was a large asset; in early 1985, Kodak had over \$16 million of micrographic equipment parts in stock. (Gross Decl. ¶ 6) That was too high, so BISD and CESD management looked for ways to reduce inventories. (*Id.*)

One way was to stop making, buying and stocking parts for the benefit of ISOs. BISD and CESD management felt it made no sense for Kodak to assist these firms by manufacturing or purchasing, and then maintaining inventories of, micrographic equipment parts for their

benefit. (Gross Decl. ¶ 6; Lacy Decl. ¶ 29) They felt that these firms ought to obtain their own parts and bear all of the associated expenses themselves. That would significantly reduce Kodak's inventories and improve its return on assets. (*Id.*) Thus it was decided not to sell parts for newer products to entities other than direct equipment customers.

A less restrictive but consistent rule was adopted as to parts for older micrographic equipment. Because it had sold these parts to ISOs in the past, Kodak decided to continue selling them to ISOs. (Gross Decl. ¶ 9) However, Kodak felt that, at the very least, some of the burden of holding these parts in inventory ought to be shifted to the ISOs. Accordingly, Kodak reserved the right to hold and consolidate orders from ISOs so that rather than being filled from Kodak's inventories, they could be filled by placing orders from Kodak's suppliers. (Gross Decl. ¶¶ 9-10) In practice, that has happened infrequently because Kodak's inventories of most parts are so high that in most cases it makes sense to fill the ISO's part order immediately. (Lorensen Decl. ¶¶ 8-9) But shifting inventory costs to the parties that caused them, the ISOs, was a major reason for the adoption of the BISD parts policy. (Lacy Decl. ¶ 29)

#### c. Not Supporting Free-Riding

Finally, another reason for the parts policies is that Kodak does not want to help the ISOs take away service revenues from Kodak.

ISOs are free-riders. Unlike Kodak, which has invested hundreds of millions of dollars in its copier and imaging equipment businesses, the ISOs have invested virtually nothing. (Lacy Decl. ¶ 28; Murray Decl. ¶ 31) They refuse to make their own parts or obtain them from other sources. And they certainly do not invest in high quality service, for example by investing in training, the way Kodak does. (Lorenzen Decl. ¶ 12; Gross Decl. ¶ 12; Lacy Decl. ¶¶ 25, 27; Murray Decl. ¶¶ 27, 29) In fact, most of the ISOs who target Kodak are former Kodak service people who were trained by Kodak at Kodak's expense. (Lacy Decl. ¶ 28; Murray Decl. ¶ 29)

The reason ISOs target service revenues is obvious. If they can get parts from Kodak, ISOs can offer some level of service on a virtual shoestring. Their market is made for them by Kodak at Kodak's expense. And they can underprice Kodak because ISOs do not need to recapture the huge investment Kodak made in the business.

Kodak does not feel obligated to promote the activities of free-riders like plaintiffs, whose sole business is targeting revenues which would otherwise be Kodak's. Because it must compete against the likes of Xerox, IBM, Bell and Howell and numerous Japanese firms, it is hard enough for Kodak to make an adequate return on its investments in these industries. (Murray Decl. ¶ 32) It would be even harder if Kodak were forced to assist ISOs in their efforts to take away Kodak's service revenues, an important part of the total return on those investments. In fact, if Kodak is required to assist ISOs, and they take away Kodak's service revenues, the result in the long run will be anticompetitive. Investment in these industries will be less attractive, and Kodak will be forced to reduce

the commitment to service it has brought to these markets. That will be to the detriment of both customers and Kodak, whose service-based marketing strategy has served the interests of competition well.

Accordingly, quite apart from all of the other reasons motivating the parts policy, Kodak has declined to sell parts to the ISOs because it does not want to help them take away revenues from Kodak. If the ISOs want to compete against Kodak, they, like Xerox and 3M and Kodak's other legitimate competitors, should develop at their expense the resources needed to do so.

## 2. The Used Equipment Policy

There is one main business reason for the used equipment policy, and it is very simple. When Kodak reviewed this policy (both for Copy Products and BISD), Kodak was experiencing recurring problems with resold copiers and micrographic equipment. (Murray Decl. ¶ 34; Gross Decl. ¶ 2) On many occasions, the reseller would tell their prospective customer that Kodak would service the machine in the future under an EMA service contract. No resellers were associated with Kodak and, therefore, none had authority to make those representations. (Gross Decl. ¶ 2) But they were made, and Kodak was left to deal with the customer, who had a Kodak machine and an expectation of getting Kodak service.

Of course, Kodak would ordinarily be willing to sell an EMA, but selling an EMA on used equipment was another matter. Used equipment was sold in various states of repair, ranging from well maintained to very

poorly maintained. (Murray Decl. ¶ 34; Gross Decl. ¶ 3) The economics of an EMA, however, are dependent on the machine being in good repair, much like the economics of life insurance are dependent on the health of the insured. Very simply, Kodak did not want to take an unwise business risk by placing a machine of unknown condition under an EMA that would obligate us to do whatever necessary to fix it. (Gross Decl. ¶ 5; Murray Decl. ¶ 34) So Kodak adopted a policy of prior inspection and, if needed, repair. (*Id.*)

### III. ARGUMENT

#### A. Plaintiff's Claims Are Properly Disposed Of By Summary Judgment

In recent years, the Supreme Court has made it clear that summary judgment is no longer to be regarded as inappropriate in complex litigation, including antitrust cases:

Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed "to secure the just speedy and inexpensive determination of every action."

*Celotex Corp. v. Catrett*, \_\_\_ U.S. \_\_\_, 106 S. Ct. 2548, 2555 (1986) (wrongful death action); *Matsushita Electric Industrial Co. Ltd. v. Zenith Radio Corp.*, \_\_\_ U.S. \_\_\_, 106 S. Ct. 1348 (1986) (antitrust conspiracy claim). Indeed, "summary judgment is often 'particularly appropriate' in antitrust cases, because of the 'fearful dimensions' of such cases," and the enormous resources that are devoted to

them. *Ralph C. Wilson Industries, Inc. v. American Broadcasting Cos.*, 598 F. Supp. 694, 699 (N.D. Cal. 1984), *aff'd*, 794 F.2d 1359 (9th Cir. 1986).

The particular antitrust theories advanced by plaintiffs are susceptible to summary adjudication. Plaintiffs' monopolization claim requires it to prove the relevant market(s), the existence of market power, and harm to competition. All of these issues may be addressed on summary judgment. *Consul Ltd. v. Transco Energy Co.*, 805 F.2d 490 (4th Cir. 1986), *cert. denied*, 107 S. Ct. 2182 (1987) (proof of relevant market); *Barry v. Blue Cross of California*, 805 F.2d 866 (9th Cir. 1986) (market power based on market share analysis); *Assam Drug Co., Inc. v. Miller Brewing Co., Inc.*, 798 F.2d 311 (8th Cir. 1986) (market power); *T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Association*, 809 F.2d 626, 635 (9th Cir. 1987) (absence of injury to competition). Issues of intent to monopolize by refusals to deal, the heart of plaintiffs' case, can also be resolved by summary judgment. *Dimidowich*, 803 F.2d at 1478-79; *Great Escape Inc. v. Union City Body Co.*, 791 F.2d 532, 541 (7th Cir. 1986) (intent to monopolize). And plaintiffs' tying allegations are similarly subject to summary disposition. *Roberts Waikiki U-Drive, Inc. v. Budget Rent-A-Car Systems, Inc.*, 732 F.2d 1403, 1407-08 (9th Cir. 1984); *Great Escape*, 791 F.2d at 537.

This case is a perfect example of an antitrust case that is appropriate for summary judgment. Fundamentally, the issue in this case is one of law: whether an equipment manufacturer that lacks market power in the relevant equipment market may choose not to sell replacement parts to independent service firms. The evidentiary or historical facts bearing on this question are not subject to

substantial dispute. Kodak's policies are what they are, and the market setting, in particular the fact of intense interbrand equipment competition, is clear. What is needed now is for the Court to apply these facts to the substantive antitrust law that governs this case in order to determine whether, as a matter of law, Kodak's policies can be deemed anticompetitive.

#### B. Kodak's Parts Policy Is Not Anticompetitive And Does Not Violate The Sherman Act

##### 1. The Basic Rule Of *Bushie*, *Calculators Hawaii* And *Dimidowich*

This is a typical replacements parts case, very similar to those the Ninth Circuit considered in *Bushie v. Stenocord Corp.*, 460 F.2d 116 (9th Cir. 1972), *Calculators Hawaii, Inc. v. Brandt, Inc.*, 724 F.2d 1332 (9th Cir. 1983), and *Dimidowich v. Bell & Howell*, 803 F.2d 1473 (9th Cir. 1986), modified, 810 F.2d 1517 (1987). All three of those cases upheld almost identical parts policies against charges of actual and attempted monopolization. In them the Ninth Circuit has established that as a matter of law a manufacturer lacking market power in the relevant interbrand equipment market may for valid business reasons unilaterally decide not to sell replacement parts to whomsoever it chooses.

In *Bushie*, a retailer of Stenocord dictating machines sued Stenocord after his distributorship was terminated. Plaintiff contended that the termination amounted to monopolization of both a market for the sale of Stenocord dictating machines and a market for servicing Stenocord machines. 460 F.2d at 118 n.1. In other words, plaintiff

advanced market allegations perfectly analogous to those the plaintiffs advance in this case. The Ninth Circuit affirmed a summary judgment, because the existence of active interbrand equipment competition made any "monopoly" over the sale and service of the manufacturer's own product immaterial:

A manufacturer has a "natural monopoly over his own products, especially when the products are sold under trademark . . ." Unless the manufacturer used his natural monopoly to gain control of the *relevant market in which his products compete*, the antitrust laws are not violated.

*Id.* at 120 (citations omitted; emphasis added). Thus, only if the plaintiff could establish an interbrand monopoly, in the court's words "total market dominance — as distinguished from 'brand' monopoly," would a viable antitrust action lie. *Id.*

The same result was reached, although for different reasons, in *Calculators Hawaii*. Again, the issue was a manufacturer's refusal to sell replacement parts for its Products. The defendant, Brandt, Inc., manufactured money-handling machines. For some years it marketed its products in Hawaii through a distributor which had contracted with the plaintiff, Calculators Hawaii, to service and repair Brandt's products. In this role, Calculators Hawaii purchased repair parts from Brandt. 724 F.2d at 1336.

In 1976 Brandt altered its distribution system by replacing its distributor with a sales agent. The agent was given the exclusive right to both sell and service Brandt's products in Hawaii, and, accordingly, Brandt thereafter refused to sell replacement parts to Calculators Hawaii.

*Id.* Calculators Hawaii brought an antitrust action, and in a bench trial prevailed on its claim that the refusal to sell parts restrained trade in and monopolized a market for "Brandt parts." *Id.* at 1337-39.

The Ninth Circuit reversed. Unlike in *Bushie*, the court did not directly address market definition or power. *Id.* at 1338. Instead, the court found that Brandt's parts policy did not restrict competition, did not evidence an intent to monopolize, and was not predatory. *Id.* at 1338 (re Section 1 claims) & 1339 (re Section 2). The court analogized the parts policy to an exclusive dealing arrangement. Such an arrangement, by definition, contemplates refusals to deal with others, and as a consequence those others lose business. But, the court held, that "is simply insufficient" to prove either anticompetitive effect or intent. *Id.* at 1337.<sup>3</sup> Indeed, the court held that in the absence of proof of harm to competition — an "absolutely essential" element of the case — the manufacturer did not even need to advance valid business reasons for its policy in order to prevail. *Id.* at 1338.

<sup>3</sup> In fact, exclusive dealing arrangements are subject to antitrust scrutiny *only* for their potential effects on interbrand equipment competition. *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2, 45 (1984) (O'Connor, J., concurring) ("Exclusive-dealing arrangements may, in some circumstances, create or extend market power of a supplier . . . and may thus restrain horizontal competition"). They are presumed not to harm competition when "other and equivalent brands of [the relevant product] are readily available in the market." *United States v. Arnold Schwinn & Co.*, 388 U.S. 365, 376 (1967), overruled on other grounds in *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977).

Finally, in *Dimidowich* the Ninth Circuit considered a parts policy that in all but one key respect was virtually identical to Kodak's — a policy maintained by Kodak's competitor in the business imaging market, Bell and Howell. Bell & Howell's policy is not to sell replacement parts for its micrographic equipment except through its own service organization, or directly to owner-users. 803 F.2d at 1475. There is, however, one critical exception to this policy. In parts of the southwest, Bell and Howell does not distribute or service its products directly, but rather uses a distributor, Comgraphix. *Id.*

*Dimidowich*, an ISO like the Plaintiffs here, challenged Bell and Howell's parts Policy. He argued numerous theories of liability, including monopolization and a conspiracy in restraint of trade between Bell and Howell and Comgraphix. The district court granted summary judgment on the monopolization claim based on *Bushie*. 590 F. Supp. at 49-50. The Ninth Circuit affirmed, albeit on different grounds. 803 F.2d at 1478. It observed that "[a] manufacturer may choose those with whom it wishes to deal and unilaterally may refuse to deal with a distributor or customer for business reasons without running afoul of the antitrust laws." *Id.*

The district court had also granted summary judgment on the conspiracy claim, but the Ninth Circuit reversed that decision. The sole reason was that the relationship between Bell and Howell and Comgraphix, which the court characterized as a "hybrid" relationship with both horizontal and vertical elements, very nearly made plaintiff's conspiracy claim a per se offense. *Id.* at 1484 ("[i]n the absence of a vertical component," agreement if proved would have been per se illegal). Thus,

even though the court recognized that in the ordinary case the manufacturer's assertions of legitimate business reasons for its conduct would result in summary judgment, it ruled that "when *this type of hybrid arrangement* is at issue, . . . the balancing of the anticompetitive effects against the asserted justifications must be left to the jury." *Id.* (emphasis supplied).

Of course, since Kodak has no distributors whatever (Murray Decl. ¶ 24; Lacy Decl. ¶ 3), the conspiracy portion of the *Dimidowich* decision is irrelevant to this case. *Dimidowich* is nonetheless significant for three reasons. First, it affirmed the district court's grant of summary judgment on the monopolization claims. Second, it reaffirmed the right of a manufacturer, acting unilaterally, to choose among its customers. And third, by carefully distinguishing between the peculiar "hybrid" conspiracy at issue and the vertical conspiracies considered in *Calculators Hawaii* and *Bushie*, the Ninth Circuit reaffirmed the vitality of *Calculators Hawaii* and *Bushie* in the ordinary case such as this one. *Id.* at 1481 n.4.

These cases establish as a matter of law that Kodak, acting unilaterally, has every right to choose to whom it will and to whom it will not sell replacement parts. That rule is as it should be, for quite apart from the legal precedents, it is clear as a matter of undisputed fact that Kodak's practices could not have harmed competition.

The fundamental question is whether Kodak's practices are harmful to consumers. *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, \_\_\_ U.S. \_\_\_, 105 S. Ct. 2847, 2859 (1985) (necessary "to examine the effect of the challenged pattern of conduct on consumers"); see also, *Calculators*

*Hawaii*, 724 F.2d at 1337 (harm to plaintiff "simply insufficient" to prove anticompetitive effect). Plaintiffs argue that the relevant group of consumers are purchasers of Kodak products — the only consumers in the alleged markets for the service and repair of Kodak equipment. (Complaint ¶ 30) That correctly identifies the group of affected consumers. Although Kodak disagrees with plaintiffs' attempt to carve out a service "market,"<sup>4</sup> it is clear that Kodak's practices could only harm, if anyone, Kodak customers.

Thus, the critical question is whether, by declining to sell parts to plaintiffs, Kodak obtained the ability to charge its customers supra-competitive prices for Kodak service. The answer is unquestionably "no." When Kodak's customers chose to buy Kodak equipment, they indisputably could have purchased equipment from one

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<sup>4</sup> Some courts have disposed of replacement parts cases by finding that the relevant market could not be confined to servicing one manufacturer's products. *Spectrofuge Corp. v. Beckman Instruments, Inc.*, 575 F.2d 256, 282 (5th Cir. 1978) cert. denied, 440 U.S. 939 (1979); cf. *MLC, Inc. v. North American Philips Corp.*, 1983-1 Trade Cases (CCH) ¶ 65,351, p. 70,093 (S.D.N.Y. 1983). While that is perfectly valid, it is not strictly necessary to determine whether there is any separate service market and, if there is, whether it is limited to servicing one or more brands of equipment. Plaintiffs' theory of the case is that Kodak used a by-product of its alleged monopoly in Kodak equipment, its exclusive control of Kodak parts, to monopolize the service markets. If Kodak has no equipment monopoly, as the undisputed facts demonstrate, then Kodak has no monopoly power to leverage into any other market, including any service market. In that case — this case — the existence and contours of any service market are irrelevant.

of Kodak's many competitors. Therefore, any service customer worried about being charged supra-competitive prices for service, or actually charged such prices, could easily thwart such a price by simply buying some other manufacturer's equipment. Kodak knows this, and it deliberately prices its service contracts to be competitive with its equipment competitors. (Murray Decl ¶ 11; Lacy Decl. ¶ 9) In this way, interbrand equipment competition prevents Kodak from restraining competition or exerting market power in any market, including any hypothetical service market.

## 2. The Parts Policy Is Based On Valid Business Justifications

*Calculators Hawaii* makes it clear that Kodak does not even need to advance the business reasons for its policy unless an adverse effect on competition is first demonstrated, and plaintiffs cannot do that. Of course, as discussed above (pp. 11-18), Kodak had and has solid reasons for adopting and maintaining the challenged policies.

Kodak has adopted the parts policy because (a) it believes that by taking direct responsibility for the repair and maintenance of its products it can better compete against other equipment manufacturers, (b) it can reduce inventory costs, and (c) it does not want to support free-riders who do nothing but take away revenues that are rightfully part of Kodak's return on its investment in manufacturing. Every one of those reasons, and the parts policy itself, promotes interbrand competition between

equipment manufacturers. And that, interbrand competition, "is the Primary concern of antitrust law." *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 52 n.19 (1977) ("Sylvania").

The courts have frequently recognized that promoting good service in order to make a product more attractive fosters interbrand competition. Thus, they have upheld against antitrust challenge a wide variety of vertical restrictions designed to improve a manufacturer's competitiveness by assuring adequate service for the manufacturer's products. See, e.g., *Davis-Watkins Co. v. Service Merchandise*, 686 F.2d 1190, 1195-1201 (6th Cir. 1982); *Copy-Data Systems, Inc. v. Toshiba America, Inc.*, 663 F.2d 405, 410 (2d Cir. 1981). In *Sylvania* itself, the Supreme Court recognized that "service and repair are vital for many products," and that restrictions designed to ensure adequate service of a manufacturer's products could make those products more attractive, and thereby enhance interbrand competition. 433 U.S. at 55. Thus, Kodak's unilateral efforts to assure that its products are consistently and properly serviced are not anticompetitive, they are procompetitive.

Kodak's desire to reduce inventories by not making, buying or stocking parts for ISOs is also procompetitive. Eliminating costs unnecessary to delivering its own product - Kodak equipment and associated service - makes Kodak more efficient. Promoting efficiency is one of the principal goals of the antitrust laws. See *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1, 21-22 (1979); *N.C.A.A. v. Board of Regents of the University of Oklahoma*, 468 U.S. 85, 103 (1984). Interbrand competition

is directly served by policies which increase Kodak's efficiency.

Finally, the courts have frequently recognized that interbrand competition is promoted by policies which eliminate free riders. *Sylvania*, 433 U.S. at 55; *JBL Enterprises, Inc. v. Jhirmack Enterprises, Inc.*, 698 F.2d 1011, 1015 (9th Cir. 1982), cert. denied, 464 U.S. 829 (1983) (firms "more likely to expend the effort necessary to promote or service a product if they did not have to worry about [others] taking a 'free ride' on their efforts"); *O.S.C. Corp. v. Apple Computer, Inc.*, 792 F.2d 1464, 1468 (9th Cir. 1986) (elimination of "free riders" to promote interbrand competitiveness "is both legitimate and lawful."). Therefore, Kodak's desire to eliminate the efforts of ISOs to free ride on Kodak's investment in the copier and imaging equipment businesses is also procompetitive.

At bottom, Kodak believes that the antitrust laws should not prevent it from enjoying the fruits of its own labors. If there are such things as relevant service markets, there is no question that Kodak has a big advantage over plaintiffs in competing for service business: Kodak has plenty of parts. But Kodak has those parts because it has invested in the development and manufacture of copiers and micrographic equipment. There can be no doubt that Kodak's willingness to invest capital in manufacturing has greatly benefited competition and consumers. As a "reward" for its efforts, Kodak should not now be required to give ISOs parts that can only be used to take away revenues that would otherwise reward Kodak's investment. Such a rule would deter investment in manufacturing — a difficult enough venture in these

days of global competition — and thus would be distinctly anticompetitive.

Indeed, if there are such things as relevant service markets separate and distinct from the greater equipment markets, then the following passage from *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 276 (2d Cir. 1979), cert. denied, 444 U.S. 1093 (1980), sums up Kodak's case:

So long as we allow a firm to compete in several fields, we must expect it to seek the competitive advantages of its broad-based activity . . . . These are gains that accrue to any integrated firm, regardless of its market share, and they cannot by themselves be considered uses of monopoly power.

#### C. Plaintiffs Cannot Create An Antitrust Violation By Alleging One Brand Markets, Generic Conspiracies, Or Tying Arrangements

Plaintiffs are obviously aware of the rule of *Bushie, Calculators Hawaii* and *Dimidowich*, for the Complaint attempts to evade it by advancing three specious contentions: (1) that Kodak copiers and imaging equipment are so unique that they are markets unto themselves, (2) that Kodak's parts policy is the product of some type of conspiracy, and (3) that Kodak's parts policy constitutes an unlawful tying arrangement. None of these arguments works.

##### 1. The Relevant Equipment Markets Are The Interbrand Markets In Which Kodak's Products Compete

Plaintiffs attempt to salvage their Section 2 claim by arguing that Kodak equipment is "unique" and does not

face competition from equipment made by other manufacturers. (Complaint ¶¶ 26-29) Since, by definition, Kodak produces 100% of all Kodak equipment, this allegation allows plaintiffs to contend that Kodak's control over equipment parts is in fact an incident of monopoly power in the Kodak equipment markets.

This contention is nonsense, both factually and legally. It is black letter law that the relevant market must include "all products that are 'reasonably interchangeable,' and so can be said to compete with each other for the same buyers' dollars." *General Business Systems v. North American Philips Corp.*, 699 F.2d 965, 972 (9th Cir. 1983); see generally, *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962). Accordingly, the courts have repeatedly rejected arguments that one manufacturer's brand of a product constitutes a relevant market or submarket. See *Kaplan v. Burroughs Corp.*, 611 F.2d 286, 295 (9th Cir. 1979), cert. denied, 447 U.S. 924 (1980) (relevant market included not only users of computer system, but potential users of comparable systems); *MLC, Inc. v. North American Philips Corp.*, 1983-1 Trade Cases (CCH) ¶ 65,351, p. 70,093 (S.D.N.Y. 1983) (single brand component-product did not constitute a relevant product market); *Spectrofuge Corp. v. Beckman Instruments, Inc.*, 575 F.2d 256, 282 (5th Cir. 1978), cert. denied, 440 U.S. 939 (1979) (single-brand service market rejected in replacement parts case).

Here, the same holding is required as a matter of indisputable fact. Kodak equipment is sold in competition with similar equipment offered by other manufacturers such as Xerox, IBM, 3M, Bell and Howell, and numerous Japanese firms. (Murray Decl. ¶¶ 10-11; Lacy

Decl. ¶¶ 6-8) Kodak's products perform the same function as its competitors' products, they are priced to compete against those products, and customers choose between those products. (Murray Decl. ¶ 11; Lacy Decl. ¶ 9) Customers can switch from Kodak equipment to that of another manufacturer and frequently do so, particularly as a result of generous trade-in policies that Kodak and other manufacturers maintain in order to encourage switches to their equipment. (Murray Decl. ¶ 16; Lacy Decl. ¶¶ 17-18)

Against this evidence, plaintiffs' bald assertion that Kodak equipment is "unique" and "differentiated in the industry" (Complaint ¶ 27) is unavailing. The same assertion can be made of virtually any brand-name product, but that does not create a relevant market for every brand of every product. Plaintiffs' attempt to establish the monopoly power essential to its case through a one-brand market must be rejected.

## 2. Kodak Unilaterally Adopted The Parts Policy

Next, plaintiffs try to state a claim by alleging that the parts policy is the product of one to four generic conspiracies that violate Section 1 of the Sherman Act. We say generic conspiracies because plaintiffs have not identified one single person or entity with whom Kodak supposedly conspired. Rather, they have alleged that Kodak conspired with unnamed parties from four generic groups: (1) OEM suppliers of parts for Kodak equipment (Complaint ¶ 52); (2) owners of Kodak equipment (Complaint ¶ 53); (3) other independent service organizations

(Complaint ¶ 55); and (4) financial institutions (Complaint ¶ 56).

Plaintiffs' conspiracy allegations are completely conclusory; so much so that they fail even to state a cause of action. See *International Television Productions, Ltd. v. Twentieth Century Fox Television Div. of Twentieth Century-Fox Film Corp.*, 622 F. Supp. 1532, 1537 (S.D.N.Y. 1985) (Section 1 complaint must identify alleged coconspirators and describe the nature and effects of the alleged conspiracy in more than conclusory language). But more than that, plaintiffs' conspiracy allegations are simply and demonstrably false.

Kodak's declarations unequivocally deny the existence of any conspiracies, and unequivocally state that the parts policy was the product of Kodak's unilateral decisionmaking. (Murray Decl. ¶ 35; Gross Decl. ¶ 13; Lacy Decl. ¶ 32; Lorenson Decl. ¶ 13). Therefore, in order to survive Kodak's motion for summary judgment, plaintiffs must present evidence "that tends to exclude the possibility" that the alleged conspirators acted independently. *Dimidowich*, at 1479, quoting *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, \_\_\_ U.S. \_\_\_, 106 S.Ct. 1348, 1357 (1986).<sup>5</sup> To do this, plaintiffs must now come

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<sup>5</sup> Moreover, it is not enough for plaintiffs to show that Kodak has agreements with some of these entities. Of course Kodak has contracts and other agreements with its customers and suppliers. Plaintiffs must show agreements reflecting "a conscious commitment to a common scheme designed to achieve an unlawful objective." *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 768 (1984).

forward with "specific facts showing that there is a genuine issue for trial." *T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Association*, 809 F.2d 626, 630 (9th Cir. 1987) (emphasis by court). That won't happen. Plaintiffs do not have a viable theory of conspiracy, let alone evidence of one.

Moreover, even if the existence of one or more of these fanciful conspiracies was assumed, plaintiffs' Section 1 argument would still be subject to summary judgment. It is beyond genuine dispute that Kodak's business practices have not unreasonably restrained competition, but instead are reasonably related to the enhancement of competition in the interbrand markets for copiers and imaging equipment. (See pp. 12-15 above) Both *Calculators Hawaii*, 724 F.2d at 1337, and *Bushie*, 460 F.2d at 120, establish as a matter of law that a manufacturer's refusal to sell parts does not adversely affect competition, even when it is the product of a vertical conspiracy.<sup>6</sup> *Dimidowich* confirms this, 803 F.2d at 1481 n.4, and expresses doubt about the propriety of summary judgment only in the peculiar circumstances where a manufacturer engaged in dual distribution has entered into a "hybrid" conspiracy with an authorized distributor. *Id.* at 1484. Since Kodak does not engage in dual distribution and

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<sup>6</sup> This is but a specific application of the general principle that a distribution arrangement which does not reduce interbrand competition, even one that is the product of a vertical conspiracy, cannot be deemed to unreasonably restrain trade. See *Gough v. Rossmoor Corp.*, 585 F.2d 381 (9th Cir. 1978), cert. denied, 440 U.S. 936 (1979); *Kaplan v. Burroughs Corp.*, 611 F.2d 286 (9th Cir. 1979), cert. denied, 447 U.S. 924 (1980).

thus has no authorized distributors (Murray Decl. ¶ 24; Lacy Decl. ¶ 3), there is not even the possibility that plaintiffs here can prove a *Dimidowich*-type hybrid conspiracy.

Accordingly, both because there was no conspiracy and, even if there was, it did not unreasonably restrain trade, Kodak is entitled to summary judgment on plaintiffs' Section 1 claims.<sup>7</sup>

### 3. Kodak's Refusal To Sell Parts To Plaintiffs Does Not Constitute An Unlawful Tying Arrangement

Plaintiffs have creatively contorted the various products and services at issue in this case into several alleged tying arrangements. However, the imaginative combinations served up by plaintiffs do not, as a matter of law,

<sup>7</sup> Kodak recognizes that plaintiffs will likely respond to this argument by seeking discovery regarding the existence of a conspiracy pursuant to F.R.C.P. 56(f). That is inappropriate for two reasons. First, even if plaintiffs could establish some sort of vertical conspiracy, *Bushie*, *Calculators Hawaii*, and *Dimidowich* establish that such a conspiracy does not unreasonably restrain competition. Second, before plaintiffs are allowed to drag Kodak through expensive discovery, they at least ought to be required to state a viable theory of discovery and make specific allegations of specific conspiracies. As matters now stand, plaintiffs have alleged that Kodak conspired with members of literally every industry group that has some relationship to the manufacture and marketing of Kodak's products: suppliers, customers, and financial institutions. Discovery on those claims would be as broad and unfocused a fishing expedition as is possible in these industries. It should not be allowed.

present a single unlawful tie. See generally, *General Business Systems*, 699 F.2d at 977-78 (summary judgment for defendant re equipment-service tie affirmed).

In order to show the existence of an unlawful tying arrangement, plaintiffs must show that:

- (1) two distinct products or services are in fact tied such that the products are offered as a single package;
- (2) the defendant has sufficient economic power in the tying market to impose restrictions in the tied product market; and
- (3) the amount of commerce in the tied product is not insubstantial.

*General Business Systems*, 699 F.2d at 977. In addition, some "modicum of coercion" must be shown. *Mozart Co. v. Mercedes-Benz of North America Inc.*, 593 F. Supp. 1506, 1513 (N.D. Cal. 1984).

None of the tying combinations proposed by plaintiffs creates any factual issue as to the existence of a tying arrangement, market power, or coercion. Therefore, plaintiffs' tying claims must be dismissed.

#### a. Kodak Service Is Not Tied To The Purchase Of Kodak Equipment

Plaintiffs allege that purchasers of Kodak equipment are required to purchase service from Kodak. (Complaint ¶ 57). This is simply and incontrovertibly false. First, Kodak equipment and service are not sold as an inseparable package. Purchasers of Kodak equipment are free to choose to enter into a service contract with Kodak, to

enter into a service contract with an independent service organization, to engage Kodak or an independent on an as-needed or "per-call" basis, or to perform service themselves. (Murray Decl. ¶ 36; Lacy Decl. ¶ 33) Kodak has never refused or threatened to refuse to sell equipment to anyone because they did not want Kodak service for the equipment. *Id.*

Second, even if Kodak wanted to sell its equipment and service as an inseparable package, Kodak does not have sufficient market power in either the copier or imaging equipment markets to impose restrictions in the alleged "service market." (See pp. 4-6, above.) Market power exists in the tying market if:

- (1) the seller has a 'high' share of the tying product market; or
- (2) the tying product is a unique product that the seller's competitors are not able to offer; or
- (3) a substantial number of consumers have accepted the tie-in, and no factor other than the economic power of the seller explains the acceptance.

*Mozart Co. v. Mercedes-Benz of North America, Inc.*, 593 F. Supp. at 1517. Kodak has no market power in the inter-brand copier or imaging equipment markets. (See pp. 4-6, above.) Thus, although Kodak is, by definition, the sole supplier of Kodak brand service, it is not free to raise the price of service, or to compel the purchase of Kodak service. Because consumers choose equipment based on the total price of doing a job, and that total price includes service, overpriced Kodak service would only harm Kodak's competitiveness in the inter-brand equipment

markets. (Lacy Decl. ¶¶ 14-15; Murray Decl. ¶ 15) Alternatively, if Kodak service were unreasonably priced, customers could service their own equipment, in which case they could readily buy parts from Kodak.

**b. Kodak Parts Are Not Tied To The Purchase Of Kodak Equipment**

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Plaintiffs also allege that Kodak customers must purchase Kodak parts if they buy Kodak equipment. In one sense that is mostly true: Kodak equipment is made of Kodak parts, and Kodak is the only source for most of those parts until such time as someone else invests the money to make them. But that is not an unlawful tie-in for two separate reasons.

First, as a condition of buying Kodak equipment Kodak does not demand that its customers buy parts. (Murray Decl. ¶ 36; Lacy Decl. ¶ 33) Customers buy parts only when the equipment malfunctions or regular maintenance requires that something be replaced. If the customer can then obtain the part from a source other than Kodak, Kodak has no contractual or other leverage to keep them from doing so. (*Id.*)

Second, Kodak does not have market power in the tying product markets, the copier and micrographic equipment markets. (See pp. 4-6, above.) Accordingly, even if it wanted to, Kodak would not have the power to force customers into buying unwanted parts.

**c. Kodak Equipment Is Not Tied To The Purchase Of Kodak Parts**

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Plaintiffs also allege that Kodak customers are required to buy Kodak equipment as a condition to the

purchase of Kodak parts. (Complaint ¶ 59). This argument is nonsensical. Obviously, the only customers who would have any interest in buying Kodak parts are purchasers of Kodak equipment, just as Xerox customers are the only customers who would be interested in buying Xerox parts. That is simply a reflection of the fact that Kodak equipment is *made* of Kodak parts.

This allegation makes sense only if the interests of customers are ignored and only the interests of the plaintiffs are considered. Plaintiffs' real complaint is that they cannot buy parts to service someone else's Kodak equipment. But that is not the result of a tying arrangement; it is the result of a unilateral refusal to deal. No matter how much Kodak equipment the plaintiffs buy from Kodak, Kodak will never knowingly sell them a copier part or a part for its newer imaging equipment so that they can service equipment other than their own. Thus, even if the plaintiffs were to suggest a tie, *i.e.*, that they be allowed to buy parts for third party service if they bought more Kodak equipment, Kodak would reject the offer.

In any event, even assuming the plaintiffs' allegation states a tying arrangement, it would not be unlawful. Kodak lacks any market power in the parts "market." As the Ninth Circuit recognized in *General Business Systems*, no such power exists unless the defendant could raise prices or impose burdensome conditions on consumers. 699 F.2d at 977, citing, *U.S. Steel Corp. v. Fortner Enterprises*, 429 U.S. 610, 620 (1977). But the undisputed evidence is that Kodak cannot do that on either parts or service because customers could switch to competing equipment. (Murray Decl. ¶ 16; Lacy Decl. ¶ 17)

In sum, plaintiffs are unable, as a matter of law, to show that Kodak's business practices with regard to parts and service constitute unlawful tying arrangements. Replacement parts policies virtually identical to Kodak's have been examined and found not to constitute unlawful tying arrangements. See, e.g., *General Business Systems*, 699 F.2d at 977; *Dimidowich v. Bell & Howell*, 590 F. Supp. 45, 49 (C.D. Cal. 1984), aff'd in relevant part, 803 F.2d 1473 (9th Cir. 1986). Plaintiffs' tying claims should be dismissed.

#### D. Kodak's Used Equipment Policy Does Not Violate The Antitrust Laws

The used equipment policy does not require extended discussion. There is simply no authority requiring Kodak to service equipment that it did not sell, particularly when it is of an unknown, and possibly poor, condition. To the contrary, the antitrust laws have long recognized that "[a] manufacturer may choose those with whom it wishes to deal and unilaterally may refuse to deal with a distributor or customer for business reasons without running afoul of the antitrust laws." *Dimidowich*, 803 F.2d at 1478; see also *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 761 (1984); *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919).

Kodak's used equipment policy is motivated by valid business reasons. Any EMA is effectively a health insurance policy for the covered equipment. Thus, any EMA presents an element of risk to Kodak. The assessment of this risk is impossible, and the acceptance of equipment for EMA coverage is foolhardy, unless Kodak has an opportunity to determine to its satisfaction that the

equipment is in good working order. (See pp. 17-18, above.) Kodak's used equipment policy simply guarantees that Kodak will have the opportunity to assess the "health" of its prospective "insureds," and that Kodak will be paid for the expenses it incurs in making that assessment and any necessary repairs. (*Id.*) Plaintiffs, apparently, seek to make Kodak a blind and involuntary guarantor of every piece of equipment that bears the Kodak label, no matter how worn, abused or altered. This is not Kodak's legal obligation, nor is it sound business practice.

Even apart from the valid business purpose of Kodak's used equipment policy, it is clear that the policy cannot constitute an antitrust violation, because Kodak lacks market power in the interbrand equipment market, even if that market is expanded to include used equipment. (Murray Decl. ¶ 12; Lacy Decl. ¶ 10.) There is nothing unique about used equipment, whether it is manufactured by Kodak or anyone else. It must be priced competitively in order to sell in the overall interbrand equipment market. Any attempt to exercise monopoly power over the sale of used Kodak equipment would fail, because buyers would simply turn to other manufacturers' used equipment or to new equipment.

In sum, Kodak is entitled to summary judgment with respect to the used equipment policy.

#### E. Plaintiffs' State Law Claims Should Be Dismissed For Lack Of Subject Matter Jurisdiction

Plaintiffs advance claims under the state antitrust and unfair competition laws of each state in which a

plaintiff resides, a total of ten states. Federal subject matter jurisdiction over these claims is based exclusively on the doctrine of pendant jurisdiction. (E.g., Complaint ¶ 89) In such cases, however, it is settled law that "if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state law claims should be dismissed as well." *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). Because the plaintiffs' federal antitrust claims must be dismissed, there is no basis for pendent jurisdiction over the state law claims, and those claims should also be dismissed.

#### IV. CONCLUSION

Kodak has adopted the challenged business practices because they enhance, not restrain, competition. Since the material facts are not in dispute and the law is clear, Kodak is entitled to summary judgment.

Dated: August 14, 1987.

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

|                           |                      |
|---------------------------|----------------------|
| IMAGE TECHNICAL )         | )                    |
| SERVICES, INC., et al., ) | )                    |
| Plaintiffs, )             | ) No. C 87 1686 WWS  |
| v.                        | )                    |
| EASTMAN KODAK )           | ) DECLARATION OF     |
| COMPANY, )                | ) ROBERT A. LORENSON |
| Defendant. )              | )                    |

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I, ROBERT A. LORENSON, having been duly sworn,  
 testify as follows:

1. I am presently the Customer Equipment Services Manager, Business Imaging Systems, for the Customer Equipment Services Division of Eastman Kodak Company. I have held my current position since February of 1986. As such, I have had primary responsibility for the administration and implementation of Kodak's business practices with respect to selling replacement parts for Kodak micrographic equipment and servicing used equipment. The purpose of this Declaration is to describe those business practices and the steps taken to implement

them. The facts stated in this Declaration are within my personal knowledge and if called as a witness I could testify competently to them.

2. I assumed my present job responsibilities 10 months after Kodak announced new business practices relating to the sale of replacement parts for our brand name micrographic equipment. Those practices are described in the Declaration of Emmett A. Gross and the April 12, 1985 memorandum attached as Exhibit 1 to that declaration. When I began my new job, Kodak had already implemented that part of the policy which restricted sales of parts on newly introduced micrographic equipment, but had not yet implemented the policy with respect to parts for our older equipment.

3. In July of 1986 we took a step toward implementing that policy by sending a form letter to all the firms we knew of that were buying parts from us to provide third party service. That letter is attached to my Declaration as Exhibit 1. It was signed by Joseph M. O'Brien, who worked for me, but the letter was prepared under my direction and I am responsible for its content.

4. As indicated in the first paragraph, the purpose of the letter was to communicate our replacement parts policy to firms which did not purchase micrographic equipment directly from Kodak. It notes that we manufacture and stock parts to meet the repair needs of our service customers, and that it is not our practice to provide training, publications, tools or parts to firms servicing others' equipment. Accordingly, the letter announced that effective September 1, 1986, we would impose the following conditions and restrictions on orders received

from firms that were not direct purchasers of Kodak equipment:

(a) We would insist that the entity have "previously and regularly purchased parts for the same equipment model." This was meant to "grandfather" existing independent service organizations, and to continue the restriction on sales of parts for newly introduced micrographic equipment.

(b) We placed the firms on notice that their orders would not, as a matter of practice, be filled from Kodak's existing inventories, but would ordinarily be consolidated with orders placed periodically with Kodak's sources of supply. We also told them that we anticipated the lead time for consolidated orders would be 90 days or more. This was designed to require the independent service organizations to order parts in advance and carry them in inventory at their expense, just as Kodak does for itself at its expense.

(c) We stated that "all time" parts would not be available to these firms. "All time" parts are those parts as to which Kodak has placed an order with our supplier for the total number of parts that we expect to need over the lifetime of a product. In other words, they are parts that we do not expect to reorder ever again and exist only in inventory. Many "all time" parts are simply unavailable from any existing source. Since we determined not to sell independent service organizations parts from inventory, it followed that we would not sell them "all time" parts.

(d) We stated we would charge the list price for the part at the time the order was filled. This was designed to

protect us from the possibility that the cost of a part we had to order from our supplier would rise relative to what we had paid for our own inventory.

(e) We reiterated our existing practice not to sell parts on newly introduced micrographic equipment to firms other than our direct equipment and service customers.

5. Kodak has never applied the policy regarding parts for our older micrographic equipment as strictly as the letter might suggest. In particular, we have not automatically held orders from independent service organizations, we have filled most of their orders for "all time" parts, and we have not charged list prices to independent service organizations.

6. Except for a two to three week period in September 1986 (when the policy first went into effect), Kodak has not held or consolidated orders from companies that were not direct equipment purchasers ("non-users"). In fact, after a review of our inventory of parts on hand, their orders have almost always been filled from our inventories. In retrospect, the letter did not communicate our intentions clearly, for we never intended to put an automatic hold on orders from non-users for parts for our older equipment. Rather, we intended to fill their orders from our inventories if we could, but reserving the right to hold and consolidate their orders if our inventories were insufficient, or might not be sufficient, to meet our own needs.

7. This practice is indicated by my memorandum of September 23, 1986 to Neil A. Farrar, the Manager of CESD's Parts Services department. (The memorandum is

attached to this Declaration as Exhibit 2.) I wrote this memorandum after learning that some parts orders from independent service organizations were going to be held for 90 days before processing, supposedly to implement our policy. Since this was an incorrect interpretation of the policy, I wrote to clarify our intentions, and stated, in part, as follows:

As the letter sent out indicated, we are in business to support the repair needs of customers who purchase BIS equipment directly from Kodak. Towards that end, we want to have an inventory that does meet this objective in a timely manner. However, as you are aware, we also need to improve our return on assets by reducing our inventory levels, thus turning the inventory more often. Our parts planners need to evaluate the orders that come in from these entities [non-users] to make sure that before orders are shipped, we know we have the stock to support our customers. If there is enough stock, the orders should be processed. If there is not, they should be held.

8. This memorandum correctly states how the policy was actually implemented. The key to it is that proper inventory management should guide the individual decision whether to immediately fill or hold an order from an independent service organization. Thus, whenever we have excess inventory of a particular part, we will fill all orders for that part immediately, including orders from non-users. If parts on hand are low and needed for Kodak's own uses, orders are held pending resupply of the inventory, if possible.

9. In practice, this has meant that non-users have had their parts orders filled with only a minimal delay in

the great majority of cases. That is because, unfortunately for Kodak, our inventories of most parts are substantially larger than they should be to meet our own needs. Thus, we usually decide to ship the parts ordered by non-users immediately so that we can reduce our inventories. Although the review period causes orders from non-users to be delayed a few days or, at the outside, a couple of weeks, there have been few instances where a parts order was held for anything approaching 90 days. When a substantial delay has occurred, it has almost always been due to a serious shortage of the part in question.

10. In fact, in most instances we will even fill a non-user's order for an "all time" part. Often this is because we are overstocked on these parts, but it is also because some of these parts can be reordered. Of all the parts for our older micrographic equipment, the only category of such parts that generally are not sold to non-users are those "all time" parts as to which the maker (either Kodak or another supplier) has scrapped the tools and dies and no alternative supply exists.

11. The plaintiffs claim that Kodak has adopted and applied this policy with the intent to put them out of business. That is not true. We recognize that our parts policy imposes certain costs on independent service organizations, and that plaintiffs would prefer Kodak to bear those costs. But it makes no sense for Kodak to, in effect, subsidize competition against ourselves by bearing parts and inventory costs that ought rightfully be borne by the independent service organizations.

12. Nor is our policy with respect to parts for newly introduced micrographic equipment motivated by a

desire to harm plaintiffs. In the first instance, that policy is motivated by our belief that we can more effectively compete in the micrographic equipment market if we can service our own equipment. The marketing of Kodak micrographics equipment and supplies is enhanced by proper and efficient servicing, and by maintaining regular contact with our customers through our field engineers. Kodak expends enormous resources to assure that our service capabilities are the best in the micrographics industry. We require all of our field engineers to have a minimum of two years training in electronics or its equivalent. We then train each of them extensively. The basic training course for every field engineer lasts a minimum of nine weeks, and then each spends an average of two weeks per year on formal refresher courses and updates. Our annual training budget is over \$1.5 million. We spend that money because Kodak's reputation of having the best service organization in the micrographics industry is a key to the success of our equipment business.

13. Plaintiffs also claim that Kodak has applied the parts policy in an arbitrary and discriminatory manner, and even that we have conspired with certain independent service organizations to allocate territories and refuse to deal with plaintiffs. These allegations are all false. Our policy is not the product of any conspiracy, and we have not, by conspiracy or otherwise, favored some independent service organizations over others.

14. I will be the first to admit that we have not always been able to identify each parts order placed by an independent service organization, and that as a result a particular independent service organization may have

been able to buy parts, especially parts for older micrographic equipment, without any restrictions. But when this has occurred, it reflects our inability to police the policy with 100 percent effectiveness at all times, not any intentional discrimination. Of course, when this happens it favors the independent service organizations, not Kodak.

15. Many of our problems in this regard are due to the fact that we have had great difficulty in establishing procedures to distinguish between the many thousands of our direct equipment customers with unrestricted access to parts, and those, like the independent service organizations, to whom we restrict parts sales. At the present time, our procedures are based on an often imprecise effort to identify those firms who are not direct equipment customers and do not have unrestricted access to parts. We refer to them as "Business Equipment Non-Users," or "BENUs." When a BENU is identified, a code is programmed into our parts services computer so that when an order is placed, and the BENU's customer number is entered into the computerized ordering system, a message is flashed which alerts the Customer Service representative that the customer is a BENU.

16. This system has not been satisfactory because to date we have only been able to identify some of the firms which are not direct equipment customers and should be classified as BENUs. As a result, other firms get unrestricted access to parts for older equipment. Moreover, as many independent service organizations have discovered, the system can be evaded entirely by simply using an alias that has not been identified as a BENU. We cannot quantify it, but we believe that many independent

service organizations have obtained parts by using an alias.

17. We are presently working on a new enforcement procedure to correct these problems. It will be based on a customer number, but rather than identifying a BENU, it will identify direct equipment customers who are eligible to buy a part. If the customer is eligible to buy the part, an authorization code will appear on the computer terminal and the order will be honored. Otherwise the order will be cancelled (if the part is for a newly introduced product) or suspended pending a review of our inventory (if the part is for older equipment). We expect to have this new procedure in place in the near future.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this Declaration on August \_\_\_\_ 1987 at Rochester, New York.

---

Robert A. Lorenson

(SEAL)

July 15, 1986

(Name and Address)

Dear Sir:

The purpose of this letter is to communicate Kodak's practice with respect to sale of parts and publications to outside entities who did not purchase equipment directly from Kodak.

Kodak manufactures and stocks parts at a level carefully planned to meet the repair needs of customers who purchase Business Imaging Systems Equipment directly from Kodak. It is *not* Kodak's business practice to provide

training, publications, tools or spare parts to individuals or firms for use in servicing equipment owned by others.

Consequently, orders received on or after September 1, 1986 from any entity which did not purchase the equipment directly from Eastman Kodak Company will be accepted only if:

- The entity has previously and regularly purchased parts for the same equipment model; and
- The entity understands that orders are not filled from inventory, but are consolidated with orders placed periodically with Kodak's sources of supply. The anticipated lead time for these consolidated orders is 90 days or more.

Parts we have ordered from our suppliers on an "all time" order basis will be available only to Kodak field personnel and to customers who purchased equipment directly from Kodak and who have been trained to service their own KODAK Business Imaging Systems Equipment.

- The list price (without discount) for parts and publications, as of the time orders are filled, will apply. This price may differ from prices in effect at the time Kodak received the order because order quantities, date manufactured, special handling and other factors may significantly affect the cost of procuring and supplying such items.

You should be aware that, since early 1985, Kodak has not supplied outside entities with any parts or publications

for newly introduced products (such as the KODAK RELIANT Intelligent Microfilmer 1000).

Very truly yours,  
 Joseph M. O'Brien  
 Customer Equipment Services

JMO:lat  
 008le

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KODAK MEMO

September 23, 1986

TO: Neil Farrar  
 FROM: R. A. Lorenson  
 SUBJECT: Shipment of BIS Parts to Outside Entities Who Do Not Purchase Equipment Directly from Kodak

On several occasions, we have discussed the interpretation that Parts Services and apparently our parts planners have made of the July 15 letter that we sent to outside entities who do not purchase equipment directly from Kodak. While I recognize that there is a meeting this week on this subject, it is important that you not hold parts orders where there is no justifiable reason.

As the letter we sent out indicated, we are in business to support the repair needs of customers who purchase BIS equipment directly from Kodak. Towards that end, we want to have an inventory that does meet this objective in a timely manner. However, as you are aware, we also need to improve our return on assets by reducing our inventory levels, thus turning the inventory more often. Our parts planners need to evaluate the orders that come

in from these entities to make sure that before orders are shipped, we know that we have the stock to support our customers. If there is enough stock, the orders should be processed. If there is not, then they should be held. While ninety days was mentioned in the letter, unfortunately, I believe the current situation has our average lead time at nine periods which is not a good situation for anyone.

I hope this clarifies any misunderstanding on this subject. Further details should be worked out at this week's meeting.

/s/ Bob

RAL:aqc

cc: C. A. Carson  
 J. M. O'Brien  
 D. A. Smith

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

|                   |                        |
|-------------------|------------------------|
| IMAGE TECHNICAL ) | No. C 87 1686 WWS      |
| SERVICES, )       | DECLARATION OF         |
| INC., et al., )   | <u>EMMETT A. GROSS</u> |
| Plaintiffs, )     |                        |
| v. )              |                        |
| EASTMAN KODAK )   |                        |
| COMPANY, )        |                        |
| Defendant. )      |                        |
| )                 |                        |

I, EMMETT A. GROSS, having been duly sworn,  
 testify as follows:

1. I am employed by Eastman Kodak Company as Manager, Customer Equipment Services, for its Copy Products Division. As such, I have responsibility for the development and implementation of Kodak's business practices with respect to the sale of replacement parts for Kodak's Ektaprint copier-duplicators. In the past, I have also had responsibility for the development and implementation of Kodak's business practices with respect to the sale of replacement parts for micrographic equipment marketed by Kodak's Business Imaging Systems Division.

The facts stated in this Declaration are within my personal knowledge, and if called as a witness I could testify competently to them.

2. In April 1985 I was Field Service Manager for Kodak's Customer Equipment Service Division ('CESD'). As such I participated in a review of Kodak's policies with respect to servicing resold Kodak micrographic equipment and selling micrographic equipment parts to third party service providers. The review was occasioned primarily by reports of a recurring problem relating to previously owned Kodak micrographic equipment which was being resold by brokers and used equipment dealers. These resellers were not associated with Kodak in any way, but they frequently represented to their customers that Kodak would service this equipment under an Equipment Maintenance Agreement ('EMA'). Under an EMA Kodak agrees for a set fee to do whatever is necessary to keep the equipment running properly.

3. The practices of the resellers created two problems for Kodak. First, as with resold copier-duplicators, used micrographic equipment was sold in various conditions, ranging from properly to very poorly maintained. Kodak would therefore be taking an unwise business risk by placing equipment of unknown condition under an EMA, the profitability of which depends on the equipment being in a good state of repair at the beginning of the EMA period. Also, the equipment would be resold on occasion to a customer located far away from a Kodak office, requiring the Kodak Equipment Service Representative to travel much more than is usually the case. The extra travel time would adversely affect the profitability of the EMA.

4. Second, the practices of the resellers created a public relations problem for Kodak. Often when a firm purchased poorly maintained equipment from a reseller, they would blame Kodak for any problems they experienced, not the reseller or the previous owner. It generally did not help to explain that a poor maintenance history was the real problem; most firms took the position that because Kodak manufactured the machine, we were responsible for any problems with it. Even though these firms had not purchased the particular machine from Kodak, they were often existing or potential direct customers. Our image with them was important, and we often ended up putting the machine under an EMA and accepting the adverse financial consequences.

5. On April 12, 1985, John A. Lacy and I sent a memorandum to all BISD District Sales Managers and CESD District Service Managers announcing new practices to deal with these problems. A copy of that memorandum is attached as Exhibit 1. As described in the memorandum, our new policy was that we would not place used equipment under an EMA unless we were first allowed to inspect it and bring it up to current performance specifications, for which we would charge the customer on a time and material basis. The reason for this policy is to prevent Kodak from taking an unwise business risk by placing a machine of an unknown condition under an EMA.

6. At the same time, we also reviewed our practice of selling replacement parts on micrographic equipment. Prior to then no one had focused on the sale of micrographics parts, and we had no formal policy with respect to whom we would or would not sell parts. At that time,

there was a growing recognition throughout the entire company that we needed to improve the management of our physical assets, and that specifically we needed to improve our return on assets. For CESD, this meant reducing our parts inventory, which is the only significant physical asset under our control. In early 1985, we had over \$16 million of micrographic equipment parts in stock. Everyone agreed this was too high, so we looked for ways to reduce inventories.

7. One such way was to stop making, buying and stocking parts for the benefit of third party service organizations. These firms had sprung up relatively recently, and were actively attempting to take away service revenues. It seemed foolish to us that we would assist these firms in their efforts to compete against us by manufacturing or purchasing, and then maintaining inventories of, micrographic equipment parts for their benefit. We felt that if these firms wanted to compete against us, they should develop, at their expense, whatever resources they needed to be in business, just as we had done. We did not understand that we had an obligation to assist our competitors and reduce our service revenues.

8. We were also concerned that facilitating the efforts of the independent service organizations would harm Kodak's efforts to compete in the micrographic equipment market. Kodak service has always been, and still is, a large part of what makes Kodak's equipment attractive to customers. (See the Declaration of John A. Lacy.) We were concerned that the proliferation of independent service organizations using technicians not trained by Kodak, not trained as well as Kodak technicians, and not given the continuing training that Kodak

technicians receive, would inevitably result in a lower level of customer satisfaction that rightly or wrongly would adversely affect the customer's perception of Kodak equipment. This was an especially strong concern with respect to our newer micrographic equipment, which was becoming increasingly sophisticated, and, accordingly, required technically sophisticated service. We also wanted to avoid the inevitable buck-passing that occurs when an independent firm services a manufacturer's equipment, *i.e.*, the tendency of the service firm to blame the manufacturer if it is unable to fix something. Of course, that can be very harmful to our relationship with the customer. I felt, as did others, that it made no sense for us to facilitate third party operations that would likely tarnish Kodak's image as the manufacturer of the most reliable micrographic equipment on the market.

9. Accordingly, the April 1985 memorandum announced a new practice with respect to the sale of replacement parts on micrographic equipment. First, we decided that with respect to parts that we had historically sold to anyone, *i.e.*, parts for our older products, we would continue to do so, but not without regard to our inventory. We would require entities that were not direct Kodak equipment customers to place parts orders in advance of the immediate need for the part so that we could place their orders with our suppliers. Second, we decided that we would not sell parts on new micrographic products, beginning with the KODAK RELIANT Intelligent Microfilmer 1000, except to direct Kodak customers. This meant that we would not knowingly sell such parts to independent service organizations.

10. At the time this policy was adopted, there was considerable sentiment for cutting off all parts sales to anyone that was not a direct Kodak customer. We did not do so because we anticipated protests from the independent service organizations, and thought it would be less disruptive to them if we phased in our new policy by refusing to sell parts only on new products. Parts for the products that these firms were already servicing would still be made available, except that they would be required to hold them in inventory, just as we do.

11. The policy with respect to parts for newly introduced micrographic products was implemented shortly after the April 1985 memorandum. However, we never fully implemented the requirement that independent service organizations order parts in advance, and not out of stock. As of February 1986, when I became the Manager of Customer Equipment Services for Copy Products, we were still selling parts for our older micrographic equipment to independent service organizations. CESD's efforts to implement this policy are described in the Declaration of Robert A. Lorenson, who took over responsibility for implementing the micrographic equipment parts policy.

12. I presently have responsibility for overseeing the implementation of Kodak's business practices with respect to selling replacement parts for our copiers and servicing used copiers. Those practices and the reasons for them are described in the Declaration of Michael J. Murray. As Mr. Murray states, one of the reasons for the copier parts policy is the critical role that exceptional service plays in marketing Kodak's copiers. Kodak expends enormous resources to assure that our service

capabilities are the standard of the copier industry, which independent surveys say they are. We require all of our field engineers to have a minimum of two years training in electronics or its equivalent, and we train each of them extensively at our Marketing Education Center in Rochester, New York. The basic training course for every field engineer lasts ten weeks in Rochester, plus an additional five weeks of on-site field training. Each field engineer spends an average of two-and-one-half weeks per year on formal refresher courses and updates. Our annual training budget is nearly \$4 million. We spend that money to assure that Kodak's vendor service continues to be recognized as the best in the industry, which is enormously helpful in selling our copiers.

13. The complaint alleges that Kodak conspired with various entities — original equipment manufacturers that make parts for us, customers to whom we sell parts, and selected independent service organizations — to prevent plaintiffs from getting parts. Those allegations are all false. From my involvement in the development of these policies, I know that they are exclusively the product of Kodak's internal deliberations. No original equipment manufacturers, customers or independent service organizations were consulted or contacted with respect to these policies.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this Declaration on August 12, 1987 at Richville, Minnesota.

/s/ Emmett A. Gross  
Emmett A. Gross

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## EXHIBIT 1

April 12, 1985

TO: District Sales Managers, BIS  
District Service Managers, CESD

FROM: E. A. Gross, CESD, 3/16/KO (44865)  
J. A. Lacy, BIS, 5/7/KO (44536)

SUBJECT: Servicing Used Microfilm Equipment Not Sold by Eastman Kodak Company

There are two concerns which are relevant to both BISD and CESD performance in 1985.

1. Kodak is being requested to provide service on previously owned Kodak microfilm equipment which is being resold by independent equipment dealers. These dealers frequently state that Kodak will place this equipment under Equipment Maintenance Agreements when the customer makes the purchase. Since the condition of the equipment is unknown, and has been used and/or stored under unknown conditions, the risks and the costs are generally much higher to Kodak. Therefore, a special Kodak response to these kinds of situations is required.
2. Some customers are choosing service from third party service providers. While this is a customer's right, Kodak is not required to provide parts inventories, or other support to third party servicers. Those service businesses are free to develop, at their expense, whatever resources they feel are required to be in business. It follows then that traditional support functions developed by Kodak, and paid for through service fees by Kodak service customers, should not be made available to others' businesses.

As a result of these concerns, the following practices will be implemented. (These do not apply to KODAK KOMSTAR Equipment. They have been previously addressed. Refer H. Jones correspondence on that subject.)

Parts will be made available on new products (beginning with the Kodak Intelligent Microfilmer 1000) only to Kodak operating units, government customers, and Kodak customers. This applies just in the United States.

Parts for older products will not be inventoried for third party servicers. Where we have a history of selling the parts to those organizations, we will continue to do so. In the future, we will require orders to be placed in advance, so they can in turn be placed against our suppliers. It is not our intention to ship from inventories that are supported by Kodak customers who purchase services from Kodak. Parts prices to those who are not on EMAs will be adjusted upward in the range of 10% before the end of the year.

In those situations where a customer purchases used equipment from an independent equipment dealer, Kodak will require the product to be delivered for inspection to a location determined by local CESD/BISD management (ie, district office, regional ESC, CESD). The customer is responsible for arranging and paying for transportation to and from the selected location. A price will be published for that inspection in the CESD Price Catalog. Only requests for installation or service for any BISD products not delivered through the standard Kodak distribution channels would normally be covered by these changes.

Upon acceptance by the customer to a non-firm quotation, Kodak will refurbish the equipment if it is deemed practical. Modifications will be added to bring the hardware to current performance expectations at currently established per call rates. If it is not practical to refurbish, the customer will be notified, billed for the inspection, and further Kodak service will be declined. Kodak is not obligated to accept equipment which will be located in geographic areas where service capability does not exist.

After bringing the equipment to current performance levels, which carries no warranties, an EMA must be purchased by the customer. It is not our intention to offer per call service on used equipment. Only if EMAs are not available for the product will the local CESD and BISD manager determine if resources and parts are available to provide continuing service on a per call basis.

The BISD sales organization has the responsibility to notify customers and dealers of used equipment prior to the implementation of the changes to the practices regarding used equipment service availability. They also have the responsibility to resolve customer's complaints regarding the application of these policies.

Implementation of these practices will begin on receipt of price and terms and conditions updates to the CESD Price Catalog (around the end of April). Some of the parts practices will be implemented at a later date as systems and procedural changes are required at Parts Services.

Notice to appropriate parties will take place at the time of planned implementation.

/s/ Tim /s/ Jack

EAG/JAL:mms  
0053y

cc: Regional Sales Managers, Business Imaging Systems  
Managers, Special Markets  
CESD Regional Service Managers  
Mr. P. M. Carman  
Mr. D. A. Nadeau

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

|                             |                  |
|-----------------------------|------------------|
| IMAGE TECHNICAL SERVICES, ) |                  |
| INC., et al., )             | No. C 87 1686    |
| Plaintiffs, )               | ) WWS            |
| v. )                        | ) DECLARATION    |
| EASTMAN KODAK COMPANY, )    | ) OF JOHN        |
| Defendant. )                | ) <u>A. LACY</u> |
|                             | )                |

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I, JOHN A. LACY, having been duly sworn, testify as follows:

1. I am employed by Eastman Kodak Company as Vice President and General Manager, Marketing and Product Management, for the Business Imaging Systems Division ("BISD"). I have been employed by Kodak since 1957. During the last 20 years, a major portion of my professional efforts have been focused on the micrographics business. From 1979 until May 1, 1985, I was National Sales Manager, Micrographics/Information Technology Markets, of a then-existing Kodak division called Business Systems Markets Division. As such, I had overall responsibility for Kodak's sales of micrographics

and other business imaging and information management products and services, including responsibility for developing marketing strategies and programs designed to increase our sales effectiveness. I maintained these responsibilities when, on May 1, 1985, I assumed my present position as General Manager, Marketing, BISD. The facts stated in this Declaration are within my personal knowledge and if called as a witness I could testify competently to them.

2. My Declaration addresses several related subjects. First, I will describe the micrographics and image management products manufactured by Kodak, and the markets in which we compete. Second, I will discuss Kodak's marketing strategy and the significant role that Kodak service has always played in Kodak's efforts to market its business imaging equipment. Third, I will describe Kodak's business practices with respect to selling replacement parts for micrographic equipment and servicing used equipment, and in particular the business reasons for those practices.

#### The Information and Image Management Industry

3. BISD manufactures and sells business imaging equipment and supplies. This equipment includes, but is not limited to, micrographic equipment such as microfilmers, processors, and reader-printers. This equipment is used to compact an image, capture it on microfilm, store it, and retrieve it. We also manufacture Computer Output Microform ("COM") recorders, which are data processing peripherals that record computer generated data onto microfilm; Computer Assisted Retrieval

("CAR") systems, which utilize computers to locate and retrieve micrographic images; and supplies, such as microfilm, chemicals and paper. Kodak markets and services all of BISD's products itself, and does not utilize dealers, distributors, service agents or the like.

4. I have been asked to define the market or markets in which BISD competes. BISD is a competitor in what is called the information and image management industry. All of our business imaging products serve the same general function: they allow businesses to manage information that is in image form (typically words and data on paper) by capturing and storing it at very high densities, and retrieving it expeditiously as needed. Our products are a substitute for other means to store and retrieve image information, the most important of which is the maintenance of ordinary files of hard copy paper documents. In fact, maintaining hard copy files is the image management alternative that we most frequently compete against, and is utilized to manage the great majority, industry estimates say 95 percent, of images in the U.S.

5. Especially with respect to new customers — those that have not previously utilized micrographics equipment — the key to selling our products is convincing the customer that our equipment is a more cost-effective way to maintain records than traditional paper files. Accordingly, the maximum price that imaging equipment makers can obtain for an integrated system of microfilmers, processors or processing, retrieval devices, service and supplies is effectively restrained by the cost of performing the same image management function using hard copy image management techniques.

6. Of course, Kodak also has many competitors in the sale of imaging equipment, supplies and service. Our major competitors are Bell and Howell, 3M, Minolta, Canon, and Fuji. BISD, under my direction, occasionally attempts to determine Kodak's share of all sales of business imaging equipment. These estimates are based on all available data, including government statistics, competitors' annual reports, trade association publications, consultants reports, and our own sales information. Our most recent estimates are contained in a report we prepared for a presentation to our international managers in May of this year, which is attached as Exhibit 1 to my Declaration. These estimates indicate that in 1986 Kodak's share of all U.S. sales of business imaging products was slightly less than 20 percent. (Kodak's share of worldwide sales was estimated to be approximately 18 percent.)

7. We also attempt to estimate our share of sales for several product groupings. The major groups are "Capture" products, e.g., microfilmers and electronic scanners; "Retrieval" products, e.g., viewers and viewer/printers; "Systems," meaning computer assisted retrieval systems; and "COM," which are the computer output to microfilm recorders previously mentioned. These groupings are not distinct markets since each covers only a component or some components of a full image management system. But we do estimate our share of total industry sales for each grouping, and our most recent estimates are in the report attached as Exhibit 1. We estimate our 1986 U.S. shares as follows:

|                    |                                      |
|--------------------|--------------------------------------|
| Capture Products   | 41.8% of \$130.8 million total sales |
| Retrieval Products | 16.7% of \$274.3 million total sales |
| Systems            | 51.0% of \$25.1 million total sales  |
| COM Products       | 25.7% of \$78.1 million total sales  |

8. BISD is not the monopolist alleged by plaintiffs. With respect to all of its imaging products, Kodak faces strong competition from large multi-national firms like Canon, Minolta, 3M and Bell and Howell. In addition, Kodak's ability to raise prices to monopolistic levels is always restrained by the customer's option to use traditional hard copy file management techniques. Kodak cannot now, nor will it ever be able to, exert monopoly power in the information and image management business generally, or in any assumed equipment market.

9. Plaintiffs claim that Kodak micrographics products are so "unique" that BISD does not compete against other micrographic equipment makers. That is totally false. Kodak's imaging products perform the same functions as and are interchangeable with our competitors' products. While our prices may differ slightly from our competitors', they are very sensitive to — indeed, they are set in consideration of — prices for competitive equipment. To use plaintiffs' term, there is a high degree of price elasticity between our prices and prices for comparable equipment manufactured and sold by our competitors. There are no substantial differences between the marketing strategies of our imaging equipment competitors and our own. In fact, the main marketing strategy for all firms in the industry is to convince the customer that they are better off using imaging equipment instead of

hard copy files. Kodak's imaging products are not a market unto themselves, but are one set of products in a highly competitive market.

10. Plaintiffs claim there is a distinct market for reconditioned or used Kodak micrographic equipment. This is wrong on two scores. First, reconditioned and used micrographic equipment of all makes and manufacturers is available for purchase, so even if there is a reconditioned and used equipment market, it includes many more products than those made by Kodak. Second, reconditioned and used equipment are alternatives to new equipment, and thus sellers of this equipment compete in the broader markets I described earlier.

11. Plaintiffs claim there is a distinct market for servicing Kodak micrographic equipment. That is not true. Service is a component of an imaging system. Any such system must include (a) capture products (e.g., microfilmers), (b) film, (c) processing equipment, (d) retrieval devices (e.g., reader/printers or CAR systems), and (e) service. Service is an essential component because micrographic equipment requires regular maintenance and service. Without service, the customer does not get the basic product: an economical and efficient alternative to hard copy record management.

12. Kodak does not treat service as a separate product or recognize any "markets" for servicing our equipment. Our organizational structure reflects this. Our imaging equipment is developed and marketed by BISD, which is one of several Kodak Business Units. Service is performed for us by our Customer Equipment Service Division ("CESD"), which is not a business unit since it

does not develop or market any products. Rather, CESD provides customer support to Kodak's other business units, and its mission is to enhance their profitability by providing the high level of service that makes the business units' products more attractive. All marketing is done through the business units.

13. In the imaging equipment industry generally, there is no distinct service market. Although in recent years independent service organizations have sprung up, they tend not to service imaging equipment generally, but rather tend to specialize on servicing the equipment of one manufacturer. (Typically this is because the principal of the independent service organization is a former employee of one of the manufacturers.) The imaging equipment industry does not have a well-developed aftermarket like the automobile industry, where thousands of garages, service stations, etc. will service any make of automobile. All of the major imaging equipment makers provide virtually all of the service for their own products.

14. Imaging equipment makers, including Kodak, cannot exploit service as a distinct market. Any attempt to do so would inevitably and adversely affect the company's position in the equipment market. Whether or not from the perspective of an independent service organization service is considered a distinct "market," from the perspective of an equipment manufacturer like Kodak service is an element of a single product sold in the equipment market. Purchasers of imaging equipment decide to invest in that product based on the total costs of employing this technology, including service costs, as compared to the costs of hard copy image management

alternatives. They also understand that the attractiveness of any one brand of imaging equipment is based on the total costs of managing images with that brand, as compared with competing brands. Service costs normally exceed 50 percent of the total life cycle costs of imaging equipment, and neither customers nor equipment manufacturers ignore those costs.

15. Thus, the interbrand equipment market sets both equipment and service prices. If Kodak were to raise its service prices to monopolistic levels, we would undoubtedly experience adverse effects on our equipment sales. Our customers would simply switch to other equipment makers, or they would stop buying imaging equipment altogether. The adverse effects on our equipment sales would outweigh any additional profits we might be able to get on service. In fact, such a strategy would ultimately hurt even our service revenues since future service revenues are heavily dependent on present equipment sales.

16. Recognizing this, we carefully consider the pricing practices of our equipment competitors when we set our service prices. We also explicitly consider the effect that our service prices will have on our equipment sales and on the customers' total costs of managing images. That effect places a cap on the maximum amount we can charge for service.

17. Plaintiffs suggest that we can charge monopolistic prices because our existing customers are "locked in" to Kodak products and service. (Complaint ¶ 28) That is not true. First, our customers, like our competitors' customers, always have the option of switching suppliers,

and that happens often. To encourage switching to their own products, all manufacturers offer attractive trade-in programs to customers. Customers can also sell their equipment to used equipment brokers or dealers. Thus, plaintiffs' claim that a "high capital investment" in equipment locks in customers is false.

18. Second, and of even greater significance, customers can switch suppliers for their *future* imaging equipment purchases. Most customers make continuing purchases of micrographic equipment. Many have purchased their equipment over time (as opposed to all at once), so that at any given time some of their equipment is near the end of its useful life and needs to be replaced. Eventually it will all need to be replaced. Also, as our customers grow they often need to upgrade their equipment or simply buy more of it. This is a major business opportunity for Kodak; indeed, these customers are our best prospects for new sales. If we were to overcharge customers for service, we would prejudice our ability to make these sales. Kodak is in the imaging equipment business for the long term, and we would not prejudice our long term competitiveness by overcharging for Kodak service.

#### The Role of Service in Kodak's Marketing Strategy

19. The link between equipment competition and service is also evident in the emphasis we place on service in marketing our equipment. Kodak has always emphasized our service commitment in marketing our products. It is a means of distinguishing ourselves from our competitors by adding value to the equipment offering. A good example of the presentation that we make

about service is contained the brochure entitled "Performance Plus: A World of Service From Kodak," that is attached as Exhibit 2 to my Declaration. This brochure, which was prepared by CESD, is frequently given to potential imaging equipment customers. Its opening paragraphs sum up our sales efforts with respect to service:

#### more than just equipment

When you acquire Kodak equipment, anywhere in the world, you are getting more than just equipment. An unsurpassed added benefit comes with it. We call this extra advantage PERFORMANCE PLUS.

Outstanding PERFORMANCE from your factory-fresh equipment at the start . . . PLUS continued superb performance as long as you have the equipment in use.

The goal is *optimum productivity for you*. Maximum uptime, minimum downtime. Reliable, high production levels, with high quality. Deadlines met. Nobody kept waiting. High yield from every hour of employee time and every hour of your time. Productivity you can count on, day after day.

#### superlative service

To meet those Performance Plus goals, an outstanding equipment service capability backs every piece of Kodak equipment You use. You can rely on this resource. Here's why . . .

The rest of our brochure goes on to explain Kodak's service capability in detail, focusing on our advanced service technology, the training of our service technicians, our parts supply network, and the way we build serviceability into our products.

20. Another example of our pitch regarding service is the brochure entitled "Downtime! - How Much Does Poor Service Cost You?" which is Exhibit 3 to my Declaration. This brochure was prepared in 1984 by Kodak's Business Systems Marketing Division. Imaging equipment customers are extremely concerned about "downtime," the period of time when a machine is inoperable because it has malfunctioned or is being serviced. During such periods customers lose all access to vital business documents. We believe that we can differentiate ourselves from our competition and gain a marketing advantage because of the very high reliability of our equipment and our unsurpassed service capability. The "Downtime!" brochure, which is given to many potential imaging equipment customers, addresses this issue by focusing on service. In part, it says:

You invest in equipment because you want results.

No matter how much that equipment saves you, if it's down, it's useless.

Poor service means *more* downtime.

That's why you should demand — *and should get* — the best service possible. You're entitled to it!

The brochure then describes to the customer in some detail "what you'll get from Kodak service," and it reminds them that:

Independent surveys show —

Kodak customers consistently rate Kodak service tops in the industry!

Lastly, it succinctly states the relationship between our equipment and service by stating "The Kodak offer:"

- Hardware
- Software
- Systems Design
- Cost Justification
- Service

The point of this last statement is to encourage the customer to believe, as we do, that equipment, supplies and service are all components of a single product.

21. These brochures are not unusual or isolated examples of Kodak emphasizing service to sell equipment. We train our sales representatives to do so regularly. References to service appear in many of our advertisements, especially the fact that independent surveys consistently rate Kodak service as the best available. And we closely monitor our customers' satisfaction with our service to make sure we keep them happy, because that greatly affects our ability to sell more equipment to them in the future.

#### BISD's Parts Policy

22. I was directly involved in the decision to implement the parts policy that the plaintiffs challenge in this case, and the policy with respect to servicing used Kodak equipment sold by independent equipment dealers or brokers. Those policies were first adopted in 1985 and are reflected in the April 12, 1985 memorandum that Emmett A. Gross and I sent to all of our District Service and Sales Managers. (The memorandum is Exhibit 1 to Mr. Gross' Declaration.) The parts policy provided that with respect to parts that we had historically sold to anyone, i.e., parts for our older products, we would continue to do so, but not out of inventory. We would require entities that were

not direct Kodak customers to place parts orders in advance of the immediate need for the part so that we could place their orders with our suppliers. Second, we decided that we would not sell parts on new micrographic products, beginning with the Kodak Reliant Intelligent Microfilmer 1000, except to direct Kodak equipment customers. This meant that we would not knowingly sell such parts to independent service organizations.

23. With respect to servicing used equipment, the policy imposed conditions on Equipment Maintenance Agreement ("EMA") service. Specifically, we decided that before Kodak would place used equipment under an EMA, we would require the used equipment owner to take it to Kodak for inspection. For a fee, we would then inspect the machine, provide the owner with a non-firm quotation for the repair work needed to bring the machine up to current performance expectations, and perform such repairs if requested to do so. Then, the owner would be eligible for an EMA. We reserved the right not to offer service on equipment located in areas where we had no local service capability.

24. Plaintiffs claim that the parts policy was designed to monopolize a so-called market for servicing Kodak equipment, and that the used equipment policy was designed to monopolize a so-called reconditioned or used equipment market. Neither allegation is true. First, no such markets exist (at the very least we do not recognize any such markets), so we could hardly have intended to monopolize them. But more important, we had valid business reasons for our decisions that had nothing to do with these plaintiffs.

25. With respect to our parts policy, it is Kodak's belief that by taking direct responsibility for all of the components of our product offering, including service, we can increase the reliability of our products and generate the high level of customer satisfaction that is a central part of our strategy for competing in the equipment market. In business jargon, we can "add value" to the equipment. Our imaging products, particularly the newer types and models, are sophisticated and complex, and are becoming more so every day. It is not simple to repair or maintain them properly, and it is becoming more difficult to do so as product complexity (for example, computerization) increases. We spend millions of dollars every year training our field engineers so that they have a thorough understanding of our equipment and the service problems they present. This training is ongoing; our field engineers frequently receive refresher courses or updates on service issues to keep their knowledge current. This makes them the best at what they do, and that translates into customer satisfaction which translates into better equipment sales.

26. Having responsibility for service also allows Kodak to monitor the post-sale performance of our equipment. On a broad scale this allows us to determine if there are recurring problems with the equipment that might require a modification or a technological improvement. When a modification becomes necessary, as frequently happens, we provide it to our service customers at no cost. But servicing their equipment also gives us an insight to a particular customer's experience with the equipment that allows us to head off problems in advance

and protect our image with that customer as a manufacturer of high quality, reliable equipment. Moreover, it keeps the lines of communication with the customer open so that we know their needs, especially their future equipment needs, on an ongoing basis. We frequently make new sales of equipment because one of our field engineers has learned during a service call that the customer is interested in buying, or has a need for, new equipment.

27. When someone other than Kodak services our equipment, we lose these benefits. If not broken completely, the lines of routine communication with the customer are at least damaged. More important, we are convinced that, on the whole, customers will receive poorer service, experience greater downtime, and lose productivity, as a result of which our image will suffer. Independent service firms do not train their personnel as well as we do, and they certainly do not get the continuing education and overall technical support that our field engineers get. That translates into poorer service, which increases the frequency of malfunctions and downtime. It would be naive to think that customers will correctly assign blame to the independent service organization rather than to Kodak when problems arise. There is a natural tendency for customers to blame the manufacturer if there is a problem with the equipment, and that is especially likely if there is an independent service firm in the picture whose personal interests are to deflect blame away from itself. Maintaining single source responsibility for both the equipment and service avoids the "finger-pointing" that regularly occurs when that responsibility is divided.

28. The second set of reasons for our parts policy relates to the costs that we incur as a result of the independent service organizations. These come in two forms. First, these firms take away service revenues that are an important part of the return we expect to receive on our multi-million dollar investment in imaging equipment. We made that investment, and put that capital at risk, expecting a return made up of the aggregate of equipment, supplies, parts and service revenues. We spent millions more developing and maintaining a service organization to support our equipment. The independent service organizations have invested relatively nothing in the business — in fact most of the ones servicing Kodak equipment are former employees that we trained at our expense — and they target the most vulnerable component of the return on our investment. We have no interest in subsidizing their efforts.

29. Second, apart from our basic investment in the industry, providing parts for independent service organizations increases Kodak's inventory costs. This was a key consideration leading to the policy we adopted in April 1985. At that time, Kodak was very concerned with the company's asset management. With respect to BISD, one of the most obvious opportunities to improve our asset management was by reducing CESD's enormous inventories of parts for our products. When a part is held in inventory for a long time, we lose the time value of the money we receive from the sale of that part. Accordingly, proper asset management is to keep inventories as low as possible consistent with being able to service our customers. One step which we decided we could take to reduce our parts inventories was to cut down on our

previous practice of buying and stocking parts for entities which were not our customers, including independent service organizations. We felt that if these firms wished to take service revenues away from us, they should make their own parts and at the very least not expect Kodak to hold parts in inventory for their benefit.

30. Based on all of these considerations, we adopted the parts policy described above. Although we realized that the policy would make it more difficult for the independent service organizations to compete against us, the plaintiffs' allegation that the policy was designed to injure them is not true.

31. The rationale for our policy on servicing used or reconditioned equipment is very simple and self-evident. We did not want to take an unwise<sup>®</sup> business risk by placing a machine of unknown condition under an EMA that would obligate us to do whatever necessary to fix it. We were certainly not trying to monopolize any so-called "reconditioned equipment market," as plaintiffs allege.

32. Contrary to plaintiffs allegations, Kodak never conspired or even consulted with any outside entities in formulating these policies. We did not conspire or consult with independent service organizations, equipment brokers, original equipment manufacturers or any other entities prior to adopting these policies. They are the product of our unilateral decisionmaking, based on the business policies I have described.

33. Finally, Kodak does not tie the availability of Kodak service or parts to the purchase of its equipment. Kodak's customers are free to obtain service from ISOs or to perform their own service; in the latter case they may

freely obtain parts from Kodak. They may also obtain either EMA or per call service from Kodak. The choice is the customer's. Kodak has never refused or threatened to refuse to sell equipment to any customer because they did not want to buy Kodak service or parts.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this Declaration on August 13, 1987 at Rochester, New York.

/s/ John A. Lacy  
JOHN A. LACY

\* \* \*

[Exhibits 1, 2 and 3 are lodged separately with the Clerk.]

COPY  
 McCUTCHEON, DOYLE,  
 BROWN & ENERSEN  
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 Eastman Kodak Company

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

|   |                     |
|---|---------------------|
| IMAGE TECHNICAL SERVICES, INC., et al., Plaintiffs, | )                   |
| v.  | ) No. C 87 1686 WWS |
| EASTMAN KODAK COMPANY,                              | ) DECLARATION OF    |
| Defendant.  | ) MICHAEL J. MURRAY |

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I, MICHAEL J. MURRAY, having been duly sworn, testify as follows:

1. I am employed by Eastman Kodak Company as Vice President and General Manager, Marketing, for the Copy Products Division. I joined Kodak in 1961 and have been employed by the company since then. In 1968, I wrote the original business plan for Kodak's planned entry into the copier business. When Kodak's first Ektaprint copier-duplicator was introduced in 1975, I was

the Western Regional Manager for Kodak's Business Systems Markets Division, and as such was responsible for copier sales in the Western Region. In 1977 I became Kodak's Marketing Director for Copy Products, and for the past ten years I have had principal responsibility for Kodak's efforts to market its copier-duplicators. The facts stated in this Declaration are within my personal knowledge and if called as a witness I could testify competently to them.

2. My Declaration addresses several related subjects. First, I will describe Kodak's role in the copier-duplicator industry, including the types of products we make, our competitors, and the market structure. Second, I will discuss Kodak's marketing strategy and the significant role that Kodak service has always played in Kodak's efforts to market its copier-duplicators. Third, I will describe Kodak's business practices with respect to selling replacement parts for our copier-duplicators and with respect to servicing used copier-duplicators, and the business reasons for those practices.

#### The Copier-Duplicator Industry

3. I am fully familiar with the copier-duplicator industry in the United States and around the world, including the participants in that industry, their products, and the structure of the marketplace.

4. The basic product of this industry is the plain paper copier, a machine that takes a picture of an image and prints it on a plain sheet of paper. Plain paper copiers are just one of several means to duplicate an image; others include stencils, offset printing, and electronic

non-impact printers. Kodak competes in a broad market for reproducing paper images, and our copier-duplicators compete against offset printing, electronic non-impact printing, etc. However, to simplify matters, I will assume throughout this declaration that plain paper copying is a distinct market, separate and apart from other reproduction technologies.

5. The plain paper copier market is made up of many different vendors selling a wide variety of copier products. The products range from small "personal copiers" that make from 5 to 15 copies per minute ("cpm") and cost a few thousand dollars to large, high-volume duplicators with speeds greater than 100 cpm and which cost upwards of \$75,000. Obviously, a \$1,000 desk top copier does not seriously compete with a \$75,000 high-volume copier. Rather, a customer's particular copier needs lead it to a general level of speed and volume within which it compares the available alternative equipment. For that reason industry participants frequently segment the market in various ways related to the speed of the copier (*i.e.* its copies per minute rating) and its volume (*i.e.* its rating for average monthly copy volume). Market shares are usually calculated both for the industry as a whole and within speed and/or volume segments.

6. In my opinion, it is reasonable to divide the copier industry into three broad segments: low-volume, mid-volume and high-volume copiers. However, the divisions will vary from time to time and are necessarily rough because there is no logical basis for making fine speed or volume distinctions. Customers' needs exist at

every point along the speed/volume continuum. Defining a mid-volume segment is especially difficult since what are called mid-volume copiers in fact compete with both low-volume and high-volume copiers. There is certainly no industry consensus as to the appropriate definition of different segments, and internally Kodak segments copiers into different categories for different purposes. Kodak makes and markets high-volume copiers, and we market two mid-volume copiers that are manufactured for us in Japan by Canon. So we sometimes define "high volume" and "mid-volume" segments. The high volume segment is variously defined as copiers with machine speeds of 60 cpm and greater or 70 cpm and greater, and the mid-volume segment as copiers with machine speeds between 25 and 60 or 70 cpm. We also tend to consider average monthly copy volume, and thus often make calculations based on both speed and volume; for example, a high-volume segment might be defined as machines that copy at greater than 60 cpm and are rated for 25,000 and more copies per month.

7. Obviously, a firm's "market share" of any segment of the copier-duplicator industry will depend on which speed and/or volume criteria are used to define the segment. Moreover, any such share will fail to reflect the fact of competition between segments, in particular the effects that mid-volume copiers have on the adjacent segments. But whether the market is segmented or not and no matter how the market is segmented or defined, it is absolutely clear that there is no copier market in which Kodak is even the largest firm, let alone a monopolist.

8. To illustrate this, I have attached as Exhibits 1 and 2 to my declaration, two memoranda I obtained from

our Business Research Department containing our most recent estimates of market share. Exhibit 1 is a February 10, 1987 memorandum comparing our market share with that of Xerox, our largest competitor. As it shows, we believe that our present market share in the high volume segment (defined as 25,000 or more average monthly volume and machine speed of 70 cpm or more) is approximately 23%, and that Xerox's share is over twice that, 55%. (Most of the remaining 22% of the market is held by IBM.) We believe that our present market share in the mid-volume segment (10,000 or more average monthly volume and machine speed of 25-65 cpm) is approximately 4%. Obviously, we are not monopolists in either the overall market or in either defined segment.

9. Exhibit 2 is a June 30, 1986 memorandum that also analyzes the copier market. As it shows, our market share as of year-end 1984 for all plain paper copiers was less than 2 percent. For copiers with a machine speed of greater than 60 cpm our share was 27.6%, for copiers with a machine speed of greater than 70 cpm our share was 29.7%, and for copiers with a machine speed of greater than 90 cpm our share was 16.6%. Again, Xerox was considerably larger than Kodak in the total market and all segments, and IBM was larger than Kodak in the 60+ cpm and 70+ cpm segments.

10. These figures demonstrate that Kodak is not a monopolist in the plain paper copier market, or in any segment of it. No matter if a high-volume segment is carved out or how that segment is defined, Xerox is the largest firm by a wide margin, with Kodak and IBM trailing behind. In the mid-volume segment, Kodak has a

very small market share in an extremely competitive segment populated by Xerox, Canon, Savin, Ricoh, Sharp, Oce, and other firms. Moreover, there is no possibility that Kodak will become a monopolist in the overall market or either (or any) segment. Japanese firms, led by Canon and Konica, have recently begun producing higher volume copiers, which should lower Kodak's share of the high-volume segment. Even ignoring the Japanese, Kodak could not possibly monopolize a market presently dominated by Xerox, whose name is synonymous with copying, and in which we must also compete with IBM.

11. I understand the plaintiffs claim that Kodak's copier-duplicators are so unique that they are a market unto themselves in which, by definition, Kodak is a monopolist with 100% market share. That is completely false and nonsensical. Kodak's copier-duplicators perform the same basic functions as those manufactured by Xerox, IBM, Canon, Savin, Ricoh and all of the other firms in this industry. There are differences in features between our products and our competitors', but none is substantial and none makes our product the only product that can serve any significant customer group. Our high-volume copier-duplicators are currently manufactured and marketed to compete primarily against Xerox and IBM products, and I have no doubt that their products are manufactured and marketed to compete against ours. Our copiers are priced to compete against other firms making comparable products, and I have no doubt that if we were to raise our prices substantially, we would lose sales to those firms. In selling every one of our copiers, Kodak faces intense competition from many competitors.

12. Plaintiffs allege there is a "market" for reconditioned Kodak copiers, and that Kodak has tried to monopolize it. That is not true. Reconditioned copiers are fully interchangeable with brand new copiers. They perform the same functions and are competitive alternatives to each other. In fact, Kodak sells its reconditioned (we call them "remanufactured") copiers with a new product warranty. Interbrand equipment competition prevents Kodak from exerting market power on sales of any copiers, new or reconditioned.

13. Plaintiffs claim there is a distinct market for servicing Kodak copier-duplicators. Certainly from Kodak's perspective that is not true. Customers cannot and do not consider service as a separate product; service is inevitably a part of the consideration relating to equipment purchases. Indeed, service is of interest to customers only because copier-duplicators require service on a regular basis, both for routine upkeep and to repair malfunctions. Like the design of the product itself, good service is a means of making the product reliable and productive. Without service, the customer does not get the basic product: a reliable method to reproduce documents. Thus, like our products' design and features, exceptional service is part of Kodak's copier-duplicator product offering.

14. In the copier-duplicator industry generally, there is no distinct service market. All of the major copier makers provide virtually all of the service for their own products. Independent service is a very minor phenomenon in the copier-duplicator industry. There are a few independent service organizations, but there is nothing in

the way of a well-developed aftermarket like that in the automobile industry or some other industries.

15. Finally, copier makers, including Kodak, cannot exploit service as a distinct market. If they tried to do so by raising prices or cutting back on quality, they would undoubtedly feel an adverse effect in the equipment market. The attractiveness of any one brand of copier depends on the total costs and benefits of reproducing documents with that copier, as compared with the total costs and benefits of using another copier. Service costs are a substantial part of the total costs, and the manufacturer's service commitment and offering are a major part of the total benefits. Raising the price or reducing the quality of service therefore affects the customer's perception of the attractiveness of one's product, which in a market as competitive as the copier market can mean the difference between making and not making a sale. For that reason, we always make sure that our service prices are competitive with those charged by our equipment competitors, and that they are set at a level that will not adversely affect our equipment sales.

16. Plaintiffs claim that we can charge monopolistic prices because our existing customers are "locked in" to Kodak products and service. (Complaint ¶ 28) That is not true. I believe we have succeeded in engendering a certain amount of customer loyalty because of the quality of our equipment and service, and many of our customers choose to use Kodak copiers exclusively. But there are no particular technological or economic reasons why they must do so. In fact, many firms use copiers from several different vendors at the same time. A copier is basically a

stand-alone piece of equipment. If the customer is dissatisfied with the equipment or it reaches the end of its useful life, it is replaced, and at that time, other than the ordinary advantages or disadvantages to different copiers, there are no substantial advantages to staying with a particular brand. We frequently gain customers which previously used our competitors' copiers, and we frequently lose customers to our competitors. No one is locked-in to Kodak or any other copier maker.

#### The Role of Service in Kodak's Marketing Strategy

17. When Kodak first entered the plain paper copier industry in 1975, we stressed two points in our marketing strategy. First, we set out to design and manufacture a copier that was more productive than any copier that was then on the market. Primarily, this meant designing a copier that could automate as many parts of the reproduction process as possible, including feeding the document into the copier, copying it, collating it, and, if desired, stapling it. Existing products, we believed, had deficiencies with respect to total job stream productivity.

18. Second, and just as importantly, we wanted to stress a commitment to the highest quality service — better than any service then available on the market. We made a deliberate decision to distinguish ourselves from our competition by stressing our superior service. In fact, this was such a basic part of our marketing strategy that we did not take any orders for copiers in any geographical area until we had in place a complete, thoroughly trained service staff in that area. That strategy of phased entry earned us a lot of criticism from the business media,

which felt that we were too slow in expanding our geographic coverage. But we adopted that strategy because we wanted to build a strong reputation with our customers, which we felt was absolutely vital since we were taking on Xerox and IBM. It turned out to be a successful strategy, and to this day we still do not sell our copiers in some remote areas where we cannot offer our usual service commitment.

19. We continue to stress our service capabilities in marketing our copiers. The most visible evidence of this is the extensive advertising which we undertake to highlight our service capabilities, and the extremely high degree of customer satisfaction that we have been able to achieve with respect to service. For example, we regularly advertise the fact that for the last 6 years, Datapro's Copier User Survey has rated Kodak Ektaprint copier-duplicators number one in the industry in terms of vendor service and copier reliability. Exhibit 3 to my declaration is an advertisement we have been running this year that makes this point. It is entitled "Kodak copiers finish first!" Drawing an analogy to auto racing, it states: "Just as in endurance racing, superior reliability and outstanding service win the copier competition. Kodak copiers finish first in both categories, in an independent survey, year after year."

20. Exhibit 4 is another example of this strategy. It is an advertisement from a campaign in which we touted "The Kodak Advantage." This campaign focused on three elements of our product offering which we feel distinguish us from our competition. They are technology, reliability and service. Exhibit 4 happens to focus on the simplicity of using our copiers, but it includes the lines:

"It's all part of the Kodak Advantage: leading technology, proven reliability and the best service in the business. Reaffirmed by independent surveys, year after year." These advertisements are typical of many advertisements by which we publicize the customer satisfaction we have been able to achieve through outstanding service.

21. Exhibit 5 is a brochure which we distribute to potential customers to advertise our service capabilities. It is one of several we have prepared regarding service, including the "Performance Plus" brochure attached as Exhibit 2 to the Declaration of John A. Lacy. Exhibit 5 is entitled "Service from Kodak. You Can Count On It!" On the cover it shows a customer standing in front of a Kodak Ektaprint 250 Duplicator, and proclaiming "We choose copiers backed by outstanding manufacturer's service."

22. We are confident that our efforts to promote our service capabilities have been successful in distinguishing Kodak from our competition. The results of the Datapro surveys indicate this, and our own internal surveys indicate that the quality of our service is an important reason why customers choose Kodak copiers. It is an especially important consideration to high-volume copier customers. In fact, industry publications that describe the considerations in choosing a copier regularly emphasize the quality and cost of vendor service. Attached as an example is a Datapro article published earlier this year entitled "Selecting a Copier" (Exhibit 6). It states (at page three) that "the final selection of one copier over another should be based on the following considerations: *total cost analysis, serviceability, and ease of operation.*" (Emphasis in original.) It notes that service costs are an important

component of the total cost analysis, and it contains an extensive discussion of vendor service and what a customer should look for in evaluating service offerings. The method of evaluating different copiers that is proposed in this article is, in substance if not in so much detail, used by many copier customers. The emphasis that customers place on service is why to this day Kodak continues to stress good, affordable service as a way of enhancing the attractiveness and competitiveness of its copier-duplicators.

#### Kodak's Challenged Business Practices

##### The Parts Policy

23. Plaintiff's primary complaint is against our parts policy. It is Kodak's business practice to sell parts, publications and tools for the repair and maintenance of our copiers only to our direct copier customers who want to service their own equipment. We do not knowingly sell parts, publications or tools to individuals or firms engaged in servicing Kodak copiers owned by others, nor to individuals or firms who wish to service Kodak copiers they have purchased from sources other than Kodak.

24. This parts policy has been in effect ever since Kodak entered the copier-duplicator business in 1975. Since our initial entry, we have marketed all of our copiers, accessories, supplies and service directly to customers, and have not designated dealers, distributors, resellers, or service agents for those products. I note that the Complaint alleges that "[p]rior to July 1985, Kodak . . . sold parts for all Kodak photocopy equipment to plaintiffs." (Complaint ¶ 34) If that is meant to imply that

Kodak sold plaintiffs parts so that they could service Kodak copiers owned by other parties, it is not true. Our parts policy has been unchanged since 1975, and there was no material change in it in July 1985 or at any time close to July 1985.

25. The Complaint suggests that our parts policy is intended to drive the plaintiffs out of business. That is not true. In fact, plaintiffs' allegation does not even make sense since we adopted the parts policy years before there was any such thing as an independent service organization.

26. The actual motivation for the policy is our marketing strategy that a particular level of service commitment is part of the product we sell. Consequently, we made a deliberate decision to provide all copier service ourselves so that we would have complete control over the training of our service representatives and the procedures and methods they would employ to service our copiers. We believed then, as we do now, that by taking direct responsibility for service we can increase the long-term performance and reliability of our products and thereby generate goodwill and customer satisfaction.

27. We were particularly concerned about the training and competence of our service representatives because of the sophisticated nature of our copier-duplicators. As a general proposition, high-volume copier-duplicators are sophisticated machines requiring a high level of expertise to service properly. But in addition to that, our strategy stressed state of the art technology which naturally increased the need for technically sophisticated service representatives. Beginning with the Kodak

Ektaprint 100 which we introduced in 1975, our copiers have always employed state of the art technology. The Ektaprint 100 was the first copier to use a microprocessor to control machine functions. Our second copier, the Ektaprint 150AF, introduced the recirculating feeder, which revolutionized document handling and sorting. Every copier we subsequently manufactured advanced the state of the art further. Thus, Kodak copiers started out as complex, sophisticated machines, and they have gotten more and more complex over the years.

28. There are other important benefits to controlling the servicing of our copiers. When we provide service we can monitor the post-sale performance of our equipment. We can determine if there are recurring problems with the equipment that might require a modification, and we can spot problems with the equipment before they manifest as a malfunction and thereby protect our image with customers. There is also a direct marketing advantage to providing service since we have continuing information on our customers' future equipment needs. We frequently make new sales of equipment because one of our field engineers has learned during a service call that the customer is interested in buying, or has a need for, new equipment.

29. In addition, we have always believed that non-Kodak service would inevitably be poorer service, resulting in greater downtime, a loss of productivity, and in the end a tarnished Kodak image. Independent service firms generally do not and in my opinion cannot train their personnel as well as we do. They simply do not have the resources. While many such firms are made up of individuals who previously worked for Kodak and therefore

received Kodak training, once they leave us they lose the continuing education and training which keeps their knowledge current. Sooner or later, their knowledge becomes dated if not altogether obsolete.

30. Thus, we do not believe that independent service firms can service our equipment as well as Kodak Field Engineers. That must increase the frequency of malfunctions and downtime. When that happens the customer will inevitably blame Kodak on the theory that the manufacturer is responsible for malfunctions. It is very doubtful that Kodak's image will escape untarnished, especially since the independent service organization has an incentive to deflect the blame away from itself. Maintaining single source responsibility for both the equipment and service avoids the "fingerpointing" that will often occur when that responsibility is divided.

31. The desire to have single source responsibility for service was the reason we adopted the parts policy in 1975, but it is not the only reason we have maintained that policy. The policy has been maintained, in part, because we do not want to encourage and support independent service firms in their efforts to divert revenues that would otherwise be Kodak's. We recognize that these firms have a right to offer service of Kodak equipment if they so desire, but we feel strongly that we have no obligation to foster their efforts by providing them with parts. As things now stand, the plaintiffs want to free ride on the enormous investment Kodak made in designing and manufacturing copiers and copier parts. But that is an investment that we made for the benefit of our customers and ultimately our shareholders. We should not have to give away the rewards from our investment to

firms unwilling to make a similar investment and whose sole business is taking away service revenues from Kodak.

32. Forcing Kodak, or for that matter any equipment manufacturer, to subsidize service firms by providing parts makes it even harder to justify investments in manufacturing than it is today. Service revenues are an important part of the return Kodak expects to receive on investments in designing and manufacturing copiers. It is hard enough to obtain that return when we have to compete against the likes of Xerox and IBM, and it is going to get even harder as the Japanese firms enter the high-volume copier segment. But it is harder still if we are required to provide the fruit of our investment to service firms so they can chip away at our service revenues, the most vulnerable component of the return on our investment. We are not about to encourage the efforts of these firms by reversing a 12 year old policy against selling parts.

#### The Used Equipment Policy

33. The plaintiffs also challenge our business practice with respect to servicing used Kodak copiers that have been resold by a broker or refurbisher. Our practice is as follows. Since we have no contractual relationship with any resellers, we do not feel obligated to service copiers they sell. However, we choose to do so so long as the copier can be brought up to Kodak performance standards. Accordingly, if asked to service such a copier, we first insist on the right to inspect it, for which we charge a fee. If we can bring it up to our standards we

will do so, but, of course, we will charge the customer for the needed repair work. Then, depending on the age of the equipment, we will put the copier under an Equipment Maintenance Agreement ("EMA") or offer per call service on it. Attached as Exhibits 7 and 8 are copies of two memoranda that I sent out along with Ed Ince, then Manager, CES Copy Products, explaining this policy in detail.

34. The business reason for this policy is simply to protect Kodak from the losses that we would suffer if we put a poorly maintained copier under an EMA. Under the terms of an EMA, Kodak does whatever is necessary to keep the copier running well. Of course, the amount of effort required, and hence the cost to Kodak, varies directly with the condition of the equipment. In 1985, we began to experience problems with brokers who sold someone a used copier promising the customer that we would place the copier under an EMA. Often, the copier was in poor condition because of improper shipping or long periods of storage, and there were many instances when Kodak put such a copier under an EMA and lost money on it. Our response was to require that the copier be brought up to our standards on a straight time and material basis before it went under an EMA. By doing this, we certainly were not trying to monopolize any alleged market for used or refurbished equipment.

35. Finally, contrary to plaintiffs' allegations, Kodak never conspired or even consulted with any outside entities in formulating these policies. We did not conspire or consult with independent service organizations, equipment brokers, original equipment manufacturers or any other entities prior to adopting these policies. They are

the product of our unilateral decisionmaking, based on the business polices I have described.

36. Lastly, the plaintiffs' claims that Kodak ties equipment, parts, and service together are wrong. Kodak does not require that its copier customers buy Kodak service or parts to get our equipment. In fact, customers have the option of purchasing Kodak service (on either a per call or EMA basis) or ISO service, or servicing their own copiers. If they choose to service their own, they may obtain parts from Kodak. Kodak has never refused or threatened to refuse to sell equipment unless the customer agreed to buy Kodak service and parts.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this Declaration on August 13, 1987 at Rochester, New York.

/s/ Michael J. Murray  
Michael J. Murray

#### EXHIBIT I

#### KODAK MEMO

February 10, 1987

To: R. J. Chenette  
From: G. C. Miller, Business Research, CP, 6/16/KO  
(43051)  
Subject: Plain Paper Copier Market Shares

In response to your question regarding the domestic market share of Xerox and Eastman Kodak, please see the attached sheet. The two key market segments are defined for high volume and mid volume areas. The share

numbers are calculated as the percentage of the installed base of machines in the appropriate segments.

The Xerox mid volume numbers for 1987 will increase, based on the strength of their new product, the 1065. It currently has limited availability (in one zone), with national availability scheduled for May. The mid volume market is large and has many vendors, therefore the effect upon Copy Products should be somewhat diminished.

/s/ Jerry Miller

cc: H. L. Blitzer  
J. L. Bradley  
L. J. Matteson  
C. L. Trowbridge

U. S. Plain Paper Copier Market Share

|                           | <u>1985</u> | <u>1986</u> | <u>1987</u> |
|---------------------------|-------------|-------------|-------------|
| High Volume Xerox *       | 55%         | 55%         | 55%         |
| High Volume Eastman Kodak | 20%         | 21%         | 23%         |
| Mid Volume Xerox **       | 18-20%      | 18-20%      | 22-25%      |
| Mid Volume Eastman Kodak  | 1%          | 3%          | 4%          |

\* HV is 25,000 or more average Copy volume, and machine speed 70 CPM or more

\*\* MV is 10,000 or more average copy volume, and machine speeds from 25-65 CPM. Xerox 1065 Partial year shipments estimated at 15,000 for 1987.

Source Business Research and F and A Copy Products.

KODAK MEMO

**EXHIBIT 2**

June 25, 1986

TO: K. J. Ludeke  
 T. P. Moore  
 M. J. Murray  
 J. L. Thomas  
 C. L. Trowbridge

FROM: F. C. Anderson, Market Intelligence-CP,  
 6/16/KO (43158)

SUBJECT: Market Shares by Vertical Markets

The attached memo was prepared from the COMTEC survey at the request of Bob Leahy. Bob suggested that I provide a copy to you with the hope that you will also find this information to be of use.

Please call if you have any questions.

/s/ Fred Anderson

cc: C. H. Hanlon  
 G. C. Miller  
 U. A. Teigman

## KODAK MEMO

June 24, 1986

TO: R. A. Leahy  
 FROM: F. C. Anderson, Market Intelligence-CP,  
 6/16/KO (43158)  
 SUBJECT: Market Shares by Vertical Markets

In response to your request for information on the above captioned subject, attached are the following profiles:

- market share by vendor for the total PPC market,
- market share by vendor for the installed base of 60+ cpm PPC's,
- market share by vendor for copiers in the 10K and over, 25K and over, and the 50K and over AMCV levels.

As you mentioned, a few of the vertical markets need to be clarified:

- Transportation and Utilities also includes the communications industry (television and radio broadcasting).
- Business and Professional Services includes advertising agencies, credit reporting agencies, direct mail firms, employment agencies, news syndicates, computer related services, management consulting firms, engineering companies, and accounting firms.
- Miscellaneous Services includes segments such as nonprofit organizations, social services, and legal firms.
- Health includes all public and private health services.

- Education includes all public and private educational facilities.
- Print-for-Pay includes both quick and commercial printers.

In reviewing this information one point which appears evident is that the education vertical market may present a significant growth opportunity for high volume placements by Kodak.

If I can provide any additional information or if you have any questions, please call.

/s/ Fred Anderson

cc: C. H. Hanlon  
 G. C. Miller  
 U. A. Teigman UAT

TOTAL PPC MARKET (YEAR-END 1984)

| VERTICAL<br>MARKETS/<br>INSTALLED<br>BASE | MARKET SHARES |         |         |         |         |           |       |         |
|---|---------------|---------|---------|---------|---------|-----------|-------|---------|
|   | % KODAK       | % XEROX | % CANON | % SHARP | % SAVIN | % MINOLTA | % IBM | % OTHER |
| AG, MIN,<br>CONST                         | 2.1%          | 27.8%   | 18.1%   | 17.2%   | 5.7%    | 4.9%      | 2.7%  | 21.5%   |
| <u>159,820 Units</u>                      |               |         |         |         |         |           |       |         |
| MANUFAC-<br>TURING                        | 2.3           | 24.4    | 12.1    | 12.0    | 8.0     | 9.6       | 6.4   | 25.2    |
| <u>268,415 Units</u>                      |               |         |         |         |         |           |       |         |
| TRANS, UTILITY                            | 1.4           | 28.7    | 15.1    | 11.2    | 7.1     | 4.8       | 2.7   | 29.0    |
| <u>153,218 Units</u>                      |               |         |         |         |         |           |       |         |
| RETAIL                                    | 0.1           | 18.8    | 12.3    | 14.7    | 14.3    | 10.9      | 3.3   | 25.6    |
| <u>201,981 Units</u>                      |               |         |         |         |         |           |       |         |
| WHOLESALE                                 | 1.1           | 14.5    | 11.0    | 16.5    | 7.0     | 9.6       | 2.3   | 38.0    |
| <u>264,656 Units</u>                      |               |         |         |         |         |           |       |         |
| FINANCE,<br>INSURANCE                     | 1.4           | 22.4    | 16.0    | 9.7     | 7.7     | 7.8       | 5.5   | 29.5    |
| <u>341,199 Units</u>                      |               |         |         |         |         |           |       |         |

| BUS/PROF.<br>SERVICE   |      |       |       |       |      |      |      |       |
|------------------------|------|-------|-------|-------|------|------|------|-------|
| <u>332,174 Units</u>   | 1.7  | 28.3  | 13.2  | 14.9  | 8.4  | 8.3  | 3.7  | 21.4  |
| MISC SERVICES          |      |       |       |       |      |      |      |       |
| <u>246,922 Units</u>   | 0.1  | 22.9  | 15.8  | 19.0  | 6.6  | 12.1 | 1.9  | 21.6  |
| HEALTH                 |      |       |       |       |      |      |      |       |
| <u>243,391 Units</u>   | 0.1  | 21.7  | 14.4  | 14.3  | 6.9  | 9.1  | 1.7  | 31.8  |
| EDUCATION              |      |       |       |       |      |      |      |       |
| <u>217,231 Units</u>   | 0.3  | 29.8  | 10.9  | 8.9   | 10.6 | 5.6  | 3.8  | 30.1  |
| GOVERNMENT             |      |       |       |       |      |      |      |       |
| <u>152,848 Units</u>   | 2.0  | 27.6  | 11.3  | 7.3   | 14.5 | 6.0  | 4.7  | 26.6  |
| PRINT-FOR-PAY          |      |       |       |       |      |      |      |       |
| <u>45,887 Units</u>    | 10.9 | 18.2  | 6.6   | 8.8   | 5.9  | 8.4  | 3.6  | 37.6  |
| TOTAL UNITS            |      |       |       |       |      |      |      |       |
| <u>2,627,741 Units</u> |      |       |       |       |      |      |      |       |
| % OVERALL<br>SHARE     | 1.3% | 23.8% | 13.5% | 13.3% | 8.5% | 8.4% | 3.6% | 27.6% |

MARKET SHARE: 60+ CPM PLAIN PAPER COPIERS  
SOURCE: COMTEC YEAR-END 1984

| <u>VERTICAL MARKETS</u> | <u>INSTALLED BASE</u>  | <u>% IBM</u> | <u>MARKET SHARES % KODAK</u> | <u>% XEROX</u> |
|-------------------------|------------------------|--------------|------------------------------|----------------|
| AG, MIN CONST           | 8,714 Units            | 37.9%        | 39.2%                        | 22.9%          |
| MANUFACTURING           | 22,020 Units           | 35.4         | 27.9                         | 36.7           |
| TRANS, UTILITY          | 9,993 Units            | 21.6         | 21.2                         | 57.2           |
| RETAIL                  | 1,654 Units            | 26.2         | 15.8                         | 58.0           |
| WHOLESALE               | 4,736 Units            | 13.3         | 61.2                         | 25.5           |
| FINANCE, INSURANCE      | 13,743 Units           | 38.3         | 33.8                         | 27.9           |
| BUS/PROF. SERVICE       | 20,944 Units           | 25.0         | 26.2                         | 48.8           |
| MISC SERVICES           | 3,896 Units            | 35.4         | 3.5                          | 61.1           |
| HEALTH                  | 4,553 Units            | 46.9         | 7.7                          | 45.4           |
| EDUCATION               | 14,734 Units           | 18.6         | 4.0                          | 77.4           |
| GOVERNMENT              | 10,383 Units           | 38.9         | 29.8                         | 31.3           |
| PRINT-FOR-PAY           | 8,106 Units            | 1.9          | 61.4                         | 36.7           |
| TOTAL UNITS -           | <u>123,475 Units</u>   | <u>28.6%</u> | <u>27.6%</u>                 | <u>43.8%</u>   |
|                         | <u>% OVERALL SHARE</u> |              |                              |                |

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PPC MARKET: AMCV OF 10,000+

| <u>VERTICAL MARKETS/ INSTALLED BASE</u> | <u>KODAK %</u>      | <u>XEROX %</u> | <u>CANON %</u> | <u>SHARP %</u> | <u>SAVIN %</u> | <u>MINOLTA %</u> | <u>IBM %</u> | <u>OTHER %</u> |
|---|---------------------|----------------|----------------|----------------|----------------|------------------|--------------|----------------|
| AG, MIN, CONST                          | 18.1%               | 22.5%          | 17.0%          | 1.8%           | 5.9%           | 2.3%             | 17.5%        | 14.9%          |
| MANUFAC-TURING                          | <u>18,926 Units</u> | <u>9.4</u>     | <u>27.7</u>    | <u>11.6</u>    | <u>4.8</u>     | <u>8.9</u>       | <u>3.2</u>   | <u>15.2</u>    |
| TRANS, UTILITY                          | <u>65,647 Units</u> |                |                |                |                |                  |              |                |
| RETAIL                                  | <u>34,624 Units</u> | <u>6.1</u>     | <u>38.5</u>    | <u>11.5</u>    | <u>2.6</u>     | <u>8.0</u>       | <u>3.6</u>   | <u>8.2</u>     |
| WHOLESALE                               | <u>15,522 Units</u> | <u>1.7</u>     | <u>14.8</u>    | <u>14.5</u>    | <u>7.2</u>     | <u>34.4</u>      | <u>2.9</u>   | <u>17.5</u>    |
|   | <u>25,965 Units</u> | <u>11.2</u>    | <u>15.6</u>    | <u>16.9</u>    | <u>5.7</u>     | <u>1.4</u>       | <u>17.3</u>  | <u>5.3</u>     |
|   |                     |                |                |                |                |                  |              | <u>26.6</u>    |

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|                       |              |       |       |      |      |      |       |       |       |
|-----------------------|--------------|-------|-------|------|------|------|-------|-------|-------|
| FINANCE,<br>INSURANCE | 48,984 Units | 9.5   | 19.4  | 11.5 | 1.1  | 17.9 | 4.1   | 17.7  | 18.8  |
| BUS/PROF.<br>SERVICE  |              |       |       |      |      |      |       |       |       |
| 53,836 Units          | 10.2         | 34.4  | 9.4   | 16.5 | 6.4  | 4.4  | 10.4  | 10.4  | 8.3   |
| MISC SERVICES         |              |       |       |      |      |      |       |       |       |
| 21,739 Units          | 0.6          | 23.6  | 40.4  | 8.8  | 1.8  | 2.4  | 8.8   | 8.8   | 13.6  |
| HEALTH                |              |       |       |      |      |      |       |       |       |
| 25,760 Units          | 1.4          | 45.2  | 6.7   | 3.4  | 12.4 | 7.1  | 10.6  | 13.2  |       |
| EDUCATION             |              |       |       |      |      |      |       |       |       |
| 79,785 Units          | 0.7          | 47.3  | 6.8   | 3.8  | 8.8  | 3.4  | 5.7   | 5.7   | 23.5  |
| GOVERNMENT            |              |       |       |      |      |      |       |       |       |
| 47,238 Units          | 6.6          | 40.3  | 9.6   | 3.4  | 12.5 | 2.4  | 11.1  | 11.1  | 14.1  |
| PRINT-FOR-PAY         |              |       |       |      |      |      |       |       |       |
| 20,092 Units          | 24.8         | 21.7  | 7.4   | 0.1  | 2.9  | 1.3  | 0.8   | 0.8   | 41.0  |
| TOTAL UNITS           |              |       |       |      |      |      |       |       |       |
| 458,118 Units         |              |       |       |      |      |      |       |       |       |
| % OVERALL<br>SHARE    | 7.5%         | 32.3% | 11.8% | 5.2% | 9.8% | 4.3% | 10.7% | 10.7% | 18.4% |

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| <u>PPC MARKET: AMCV OF 25,000+</u>        |               |       |       |       |       |         |       |       |      |
|---|---------------|-------|-------|-------|-------|---------|-------|-------|------|
| VERTICAL<br>MARKETS/<br>INSTALLED<br>BASE | MARKET SHARES |       |       |       |       |         |       |       |      |
|   | KODAK         | XEROX | CANON | SHARP | SAVIN | MINOLTA | IBM   | OTHER |      |
| AG, MIN,<br>CONST                         |               |       |       |       |       |         |       |       |      |
| 3,618 Units                               | 20.1%         | 40.8% | 1.8%  | 0.0%  | 0.0%  | 0.0%    | 35.7% | 35.7% | 1.6% |
| MANUFAC-<br>TURING                        |               |       |       |       |       |         |       |       |      |
| 25,652 Units                              | 23.2          | 34.2  | 4.9   | 1.8   | 4.5   | 2.3     | 18.7  | 18.7  |      |
| TRANS,<br>UTILITY                         |               |       |       |       |       |         |       |       |      |
| 12,389 Units                              | 17.1          | 56.7  | 4.6   | 0.4   | 3.4   | 1.5     | 9.5   | 9.5   | 6.8  |
| RETAIL                                    |               |       |       |       |       |         |       |       |      |
| 5,491 Units                               | 4.3           | 18.0  | 12.8  | 11.9  | 7.1   | 0.0     | 44.2  | 44.2  | 1.7  |
| WHOLESALE                                 |               |       |       |       |       |         |       |       |      |
| 10,429 Units                              | 26.5          | 19.4  | 14.3  | 0.0   | 0.0   | 27.0    | 7.6   | 7.6   | 5.2  |

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|                               |                      |             |             |            |            |            |            |             |
|-------------------------------|----------------------|-------------|-------------|------------|------------|------------|------------|-------------|
| FINANCE,<br>INSURANCE         | 30.4                 | 25.1        | 8.0         | 0.0        | 4.5        | 1.8.       | 21.4       | 8.8         |
| <u>BUS/ PROF.<br/>SERVICE</u> | <u>24,250 Units</u>  | <u>20.6</u> | <u>47.3</u> | <u>7.3</u> | <u>0.2</u> | <u>1.4</u> | <u>0.2</u> | <u>21.2</u> |
| MISC SERVICES                 | 7,983 Units          | 1.7         | 44.3        | 13.1       | 11.4       | 3.0        | 4.7        | 15.8        |
| HEALTH                        | 6,403 Units          | 5.5         | 45.6        | 5.5        | 0.4        | 4.1        | 0.4        | 29.0        |
| EDUCATION                     | <u>27,425 Units</u>  | <u>2.1</u>  | <u>68.8</u> | <u>3.0</u> | <u>0.1</u> | <u>4.7</u> | <u>7.1</u> | <u>7.1</u>  |
| GOVERNMENT                    | <u>16,836 Units</u>  | <u>12.4</u> | <u>53.1</u> | <u>6.4</u> | <u>1.2</u> | <u>4.5</u> | <u>0.4</u> | <u>17.6</u> |
| PRINT-FOR-PAY                 | <u>12,244 Units</u>  | <u>34.9</u> | <u>30.0</u> | <u>0.3</u> | <u>0.0</u> | <u>0.0</u> | <u>1.3</u> | <u>33.5</u> |
| TOTAL UNITS                   | <u>167,271 Units</u> |             |             |            |            |            |            |             |
| % OVERALL<br>SHARE            | 17.1%                | 43.8%       | 6.2%        | 1.4%       | 3.3%       | 3.8%       | 16.1%      | 8.3%        |

% 17.1% 43.8% 6.2% 1.4% 3.3% 3.8% 16.1% 8.3%

#### PPC MARKET: AMCV OF 50,000+

| VERTICAL MARKETS/<br>INSTALLED BASE              | MARKET SHARES |         |         |       |         |
|--|---------------|---------|---------|-------|---------|
|  | % KODAK       | % XEROX | % CANON | % IBM | % OTHER |
| AG, MIN, CONST<br><u>1,412 Units</u>             | 40.9%         | 43.9%   | 0.0%    | 15.2% | 0.0%    |
| MANUFACTURING<br><u>11,187 Units</u>             | 40.5          | 50.0    | 0.0     | 9.5   | 0.0     |
| TRANS, UTILITY<br><u>6,649 Units</u>             | 22.6          | 68.8    | 0.0     | 8.5   | 0.1     |
| RETAIL<br><u>737 Units</u>                       | 25.5          | 67.0    | 0.0     | 7.4   | 0.1     |
| WHOLESALE<br><u>3,591 Units</u>                  | 72.1          | 22.1    | 0.0     | 5.8   | 0.0     |
| FINANCE, INSURANCE<br><u>6,580 Units</u>         | 60.8          | 24.3    | 0.6     | 12.7  | 1.6     |
| <u>BUS/ PROF. SERVICE</u><br><u>11,641 Units</u> | 40.9          | 54.1    | 0.0     | 4.7   | 0.3     |
| MISC SERVICES<br><u>3,513 Units</u>              | 2.4           | 67.3    | 12.4    | 17.9  | 0.0     |

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|                        |       |       |      |      |      |
|------------------------|-------|-------|------|------|------|
| <b>HEALTH</b>          | 11.6  | 59.4  | 11.8 | 17.2 | 0.0  |
| <u>3,008 Units</u>     |       |       |      |      |      |
| <b>EDUCATION</b>       | 4.8   | 91.1  | 0.0  | 4.1  | 0.0  |
| <u>11,411 Units</u>    |       |       |      |      |      |
| <b>GOVERNMENT</b>      | 27.1  | 59.5  | 4.9  | 8.0  | 0.5  |
| <u>6,483 Units</u>     |       |       |      |      |      |
| <b>PRINT-FOR-PAY</b>   | 57.8  | 39.6  | 0.5  | 2.1  | 0.0  |
| <u>7,392 Units</u>     |       |       |      |      |      |
| <b>TOTAL UNITS</b>     |       |       |      |      |      |
| <u>73,604 Units</u>    |       |       |      |      |      |
| <b>% OVERALL SHARE</b> | 34.2% | 56.1% | 1.6% | 7.8% | 0.3% |

[Exhibits 3, 4 and 5 to Declaration of Michael Murray are lodged with the Clerk.]

**EXHIBIT 6**  
**Selecting a Copier**

No other single piece of office equipment is as familiar and as useful as the office copier. Once installed and operating at peak efficiency, it is usually taken for granted; when not suited to the work load or constantly requiring service and repair, the value of a careful copier selection process is soon realized. It is difficult to imagine an office that could function smoothly without a copier, and with the new features and functions such as color copying, image editing, and multiple magnification ratios, the copier has assumed an even larger role in today's office. Copiers, it is clear, are essential ingredients in the efficient flow of communications in today's office. Since such is the case, the acquisition of a copier requires some careful thought on the part of the customer.

Although price is a major consideration in the acquisition of any office equipment, it should never be the sole factor when selecting a copier. There are a number of other factors that require equal consideration on the part of the customer before a decision is made. Chief among these are determining the customer's specific copying needs, the issue of serviceability, and the cost of equipment and supplies.

## **SURVEY COPYING NEEDS**

A survey of the company's present copying habits is a necessary first step in determining what type of copying equipment is required. A thorough analysis of established copying patterns will indicate who is making copies, how

many copies are being made, where the copying is being done, and what types of documents are being copied. This may be a relatively simple process if the company is small and the solution to the problem is fairly obvious (e.g., the company has outgrown its only small copier, making the demand for copying exceed the capabilities of the unit). In a larger firm, however, the results of such a survey may not only point to the acquisition of newer, more advanced equipment, but may also help to streamline the present copier network by eliminating seldom-used or overly sophisticated machines. In all cases, a well-executed survey will bring to light specific facts regarding copier usage that can be used as guidelines for choosing a copier. Final determining factors include price, machine serviceability, and ease of operation.

A survey of copier usage may begin with an examination of past copier billings going back from six months to a year. Billings can provide an immediate overview of volume levels and shifting usage patterns. In some cases, this study alone will point out such oddities as under-used copiers, overly expensive machines, and new units that seem to draw work away from older ones. This billing information also helps indicate what type and size of copiers seem to be most applicable to the particular office. But copier acquisitions should not be based on cost alone; a more definitive study of actual machine usage is useful in determining what type of material is being copied and what can be done to upgrade throughput. Copier monitoring devices or questionnaires may be used to capture this data.

**The copier market is currently populated with well over 200 copier models from which to choose. Selecting the**

**copier best suited for each particular application requires a few preliminary steps to insure that the right machine is acquired. Careful consideration of factors such as the company's specific copying needs, copier technology, and the cost of equipment and supplies can make the acquisition decision easier for the customer. This report provides an in-depth look at these factors and offers guidelines for selecting a copier. To help the user determine specific copying needs, a sample copier usage survey is included at the end of this report.**

Copier control and monitoring devices, which are described in Section CD51, supply the regraphics manager with data that can be used to determine departmental chargebacks for copier usage. The information provided includes the identity of the user (department and/or individual), the number of copies made by each user per machine, and, in some cases, the exact cost of copier usage per department or individual. Because such systems indicate who is using specific machines, information regarding usage patterns may also be gleaned from the cost/user data reports. This can be helpful in relocating certain copiers closer to their primary users, thus eliminating some employee travel time (a substantial factor in production schedules).

A complete understanding of *what* is being copied, as well as *by, whom* and *where*, is necessary when it comes to selecting a new machine. Although time-consuming, a user questionnaire is perhaps the most thorough method for tapping into the current and changing needs of copy-making employees. The preferred method for doing this is to have each user complete a form during each trip to the copier. The survey period should last about a month.

The success of the program depends on user awareness and cooperation, and it must be shown that the purpose of the survey is to improve service, not to take it away.

The questionnaire itself should be brief, but complete, and preferably printed on one sheet for easy handling. When applicable, multiple-choice questions, which simplify both the answering of the form and the compilation of the results, should be used. A full-page sample of a copier user questionnaire is provided in this report, covering the following areas:

- **Copier** – The name of the copier model being used.
- **User Name** – The identity of the employee using the copier.
- **User Department** – The department of the employee.
- **Number of Originals** – The number of original documents being copied.
- **Copies per Original** – The number of copies made per original, including test runs and bad copies.
- **Size of Copies** – The copy size generated per original.
- **Type of Original** – The form of the original document (i.e., ledger sheets, standard sheets, magazine/books, etc.) and special materials copied.
- **Special Copying** – The nature of any special copying task (two-sided copying, reduction, enlargement, color, etc.).
- **Inconveniences, Limitations, and Suggestions** – An opportunity for the user to express an opinion on what the company could use in the way of copying capabilities (faster speed, two-sided copying, reduction, enlargement, etc.).

It is possible that the time needed to complete the questionnaire by all copier users is an unattractive proposition

for some facilities. An alternative use of the questionnaire would be to distribute the forms to department heads, who in turn would complete them personally or conduct the surveys in their departments. A departmental meeting could then be conducted to discuss the survey and form a general consensus of opinion. The results, although more general in nature, would take much less time to compile and evaluate.

#### APPLYING THE SURVEY RESULTS

The results of a questionnaire will clearly define the needs of a company, making the selection of a new copier easier. A copier survey such as the one described would supply the following information:

- **Who Is Copying** – The survey can determine which departments dominate the available copiers and show how far a user must travel to make a copy.
- **How Much Is Being Copied** – Copy volumes per machine and per department are provided, showing which machines are most heavily used and which departments demand the most copier usage. The number of copies made per original is also given, showing the frequency of both long and short copy runs. The total volume figures should also be compared to actual meter readings to determine whether a significant amount of copier misuse (unlogged copying) is taking place.
- **What Is Being Copied** – The size and type of originals most frequently copied is indicated.
- **Special Requirements** – The use, or nonuse, of presently available features (collating, two-sided copying, reduction, etc.) is shown, as well as requests from users for additional copying capabilities.

The fundamental concerns that are covered by the copier survey will greatly narrow the field from which the manager can choose a machine. After compiling the results, four primary copying requirements will have been determined: machine speed; copy size; type of original handling; and the need for special capabilities such as two-sided copying, collating, and reduction. All that remains is an evaluation of the qualified machines, the pricing, and the availability and quality of service supplied by the vendor.

The information gained from a questionnaire program may also be helpful in designing a large-scale copier network within a company. The type of copier to be acquired may depend on the decision to go with a totally centralized reprographics system (high-speed copier/duplicators), a decentralized network of copiers (low- to mid-volume machines), or a combination setup with a central high-volume copy center in addition to satellite copiers for convenient departmental use.

#### **CHOOSING THE EQUIPMENT**

Although this report focuses primarily on electrostatic plain-paper copiers, a number of less expensive alternatives are also available. Coated-paper copiers have traditionally been regarded as having lower machine and maintenance costs than plain-paper models. However, this advantage has been whittled down by the growing number of inexpensive, low-volume plain-paper copiers appearing on the scene almost daily. The quality and aesthetic appeal of plain-paper copiers, as opposed to their coated-paper counterparts, has also continued to

prove more popular with users. Although there are a number of such models still being marketed, the coated-paper copier today is virtually a machine of the past.

Thermal and dual-spectrum copiers are suited to offices or departments with occasional copy needs averaging below 500 copies per month. These low-volume units, which require manual feeding of both the original and copy paper, are the least expensive copiers on the market; most models are priced between \$150 and \$300. If the user is willing to accept a grade of image quality somewhat lower than that available with electrostatic copiers, spirit and stencil duplicators may be employed to produce multiple impressions. These units employ paper masters to produce up to 500 copies (spirit) or 2,500 copies (stencil). Most spirit duplicators range in price from \$600 to \$1,200; most stencil duplicators are priced between \$800 and \$3,000.

Factors to consider when choosing the equipment best suited to a user's copying requirements include:

**IMAGE QUALITY** – The quality and aesthetic appeal of coated-paper copies vastly improved with the introduction of dry-toner imaging systems. It can now be said that many coated-paper units on the market produce images comparable to plain-paper machines. The feel of a dry-toned coated-paper copy is similar in texture to the clay-based paper found in many periodical publications. However, the *appeal* of a certain type of copy paper should not be the deciding factor when selecting a copier. The more pertinent question to ask is, *What is the most acceptable type of copy for the proposed application?* Over the years the standards of quality have increased to make users less

tolerant of so-called bad copies. It is this very insistence on quality that has greatly improved industry copier offerings. But not all copies have to be perfect. It is nonproductive to use a costly, high-speed copier/duplicator for generating interdepartmental memos or file copies; the capabilities of such a copier are wasted on these applications. In many cases, an acceptable copy for basic office reference is merely a legible clone, and many low-cost copiers are available to make them.

**SPEED** – Coated-paper copiers have speeds of less than 25 copies per minute. Plain-paper copiers, on the other hand, not only comprise the intermediate to high-speed ranges but also dominate the low-volume segment of the market. The plain-paper copier is characterized by intense competition among the copier manufacturers, which has created an abundance of feature-rich machines at all volume levels. As vendors increased the functionality of plain-paper copiers, coated-paper machines experienced a steady erosion of market share.

**COST** – Most copiers marketed by offshore vendors increased in price during 1986 – some by as much as 16 percent – because of the strengthening of the Japanese yen. Despite these increases, the consumer is still getting a great deal of machine for the money. It is currently possible to purchase a general-purpose plain-paper copier for less than \$1,500. Some minicopiers, or personal copiers, are selling for less than \$800. Technological advances such as micro-processor control, fiber optics, and single-component toner systems continue to simplify manufacturing procedures resulting in smaller units.

**CAPABILITY** – Special application features common to copiers of all volume ranges include multiple preset and variable reduction/enlarge copying capabilities, automatic single-sheet document feeding, color copying, and large document copying. The market also offers machines that feature image editing capabilities, so that alternate versions of original documents can be generated.

After the results of the survey have determined the type and capability of the copier needed, the final selection of one copier over another should be based on the following considerations: *total cost analysis, serviceability, and ease of operation.*

#### COST ANALYSIS

There are four primary costs associated with copiers – equipment cost; service cost; supplies cost; and operating labor cost.

A copier may be purchased, rented, or leased. A purchased machine has certain advantages over rented and leased equipment. If the product is affordable, money spent is invested into ownership and there are no finance charges. Purchasing more expensive copiers (\$5,000+), however, is a relatively recent phenomenon. As soon as a company purchases a particular machine, another more desirable model may appear on the scene. Even though certain bells and whistles can be added to a newer product, an older copier that makes a good copy and suits the general needs of the company is a rather priceless commodity, especially if the company has finished paying for it. Again, if the proper copier is selected, it will be suited

to the present and projected needs for the user, making purchase justifiable.

An alternative to purchasing new equipment is the acquisition of used and rebuilt products. It is not unusual for a manufacturer to offer a factory-renewed model of one of its machines at a savings of perhaps 50 percent under the new model price. Before buying, the user should clearly understand what the manufacturer means by renewed or similar descriptions of used equipment.

Renting a copier eliminates the problem of obsolescence. If a new product becomes available, or if the cost of the rented machine goes up considerably, the unit can be replaced within the limitations of the contract in favor of another, more cost-justifiable machine. Rental plans are generally offered in three forms. Monthly rental carries the higher rate but is usually cancelable upon 30 days written notice. Annual and two-year rental contracts offer lower cost-per-copy figures but entail termination charge penalties for contract cancellations before the rental period is up. Other types of plans include high-volume plans for copiers engaged mainly in multiple-copy runs (50,000+ copies per month range); average cost rental plans combining the production figures for multiple machines; and multiple copier rental plans for fleet users. If a company anticipates using more than five copiers from a single vendor, the manufacturer may offer multiple-machine purchase and rental packages.

A lease plan for a copier is more expensive than a rental plan, but it allows the user the option of applying a certain amount of the monthly expenditure towards the purchase of the machine at the end of the lease. The exact

percentage of monthly payments which may be applied towards purchase varies from lessor to lessor. The user agrees to pay for the copier over a specified lease period, perhaps up to five years. At the end of the period the vendor allows purchase of the equipment at a certain discount based on the cost of the unit at the start of the lease contract. For a company that desires purchase but is suspicious of possible obsolescence, lease plans provide an alternative between outright purchase and rental. For a more detailed analysis of copier financing, see Report CD09-400-101.

#### SERVICEABILITY

Copiers require maintenance, and maintenance can be costly; this is one of the hidden expenditures connected to copying equipment. Aside from the cost of supplies and the clearing of minor machine problems such as paper jams, the user must rely on the vendor to perform regular maintenance to keep a machine in top running order. This usually entails an occasional visit by the manufacturer to clean the unit and adjust the toning system, or it may involve the replacement of a photoconductor or worn parts on a regular basis.

The manufacturer should be prepared to specify or even guarantee a service call response time. A same-day response time, in the four-hour range, is definitely preferred. Anything over a day should be carefully scrutinized; the time spent with a broken-down copier is money wasted and office schedules delayed. The response time is naturally dependent on the distance of the vendor's representative from the user. In fact, in

many geographic locations, service availability alone may be a chief determinant when selecting a machine.

The next consideration is the way in which the manufacturer offers machine service. The initial warranty on parts and labor is important. There is generally a period of adjustment following the installation of a copier during which service calls may be necessary to fine-tune the machine and get the bugs out. A 90-day warranty on parts and labor is sufficient to cover these new-installation adjustment visits. Additional copier service and preventive maintenance checks can be on either a per-call or contract basis.

Service on per-call basis is charged by the hour and may or may not include the traveling time of the service representative. Rates within this type of structure can range from \$40 to \$70 per hour, an expensive proposition for a machine that seems to require an inordinate amount of servicing. It should be kept in mind that as a machine gets older the frequency of maintenance will increase, and service on a per-call basis may prove to be out of the question.

Most companies offer maintenance agreements to the user. This is a contract for a specified period, usually equal to one year or a maximum number of copies, during which the user will receive scheduled visits by a service representative. It is the duty of the service representative to perform normal preventive maintenance, such as replacing photoconductors and worn parts, as well as to respond to emergency calls to correct malfunctions. Preventive maintenance generally includes once-a-month visits. At the end of a maintenance contract

term, it can be renewed for continuing service. Rates may run from as little as \$15 per month for a low-end copier to over \$300 per month for a high-speed copier/duplicator. The advantage of a maintenance agreement is that it guarantees a certain level of service on a regular basis (which might otherwise be overlooked) and provides a price ceiling on repairs in most instances.

#### EASE OF OPERATION

It is important that the prospective customer see and test a copier model before making a decision. It is surprising how often the wonder feature of a product doesn't quite carry the same impact during a live demonstration or in practical applications. A copier should meet the full expectations of the user company and provide ease of handling for the operator. Criteria to be aware of during a copier demonstration include the following:

- **Copying Ability** – What type of original is the machine able to copy: text, photos, halftones, fine lines, solid areas? What copy sizes are provided? What is the platen size as related to the minimum and maximum reproducible images? Can the copies be written on with pencil or pen? Can written marks be erased?
- **Speed** – Does the copier require a warm-up at the start of the day? Does it remain in an instant-on mode throughout the day, or does it require subsequent warm-up periods as it is used? What is the first copy time? How do the multiple- and single-copy speeds relate to the typical needs of the prospective user?

- **Controls and Indicators** – Are the operator controls easy to use, and do they provide adequate image control (contrast or exposure dial)? Does the copy quantity selector count down to zero? Is there a resettable digital counter? Can a copying run be interrupted to reproduce a priority document? Is the exposure platen easily used, and is it relatively simple to position an original? Are there any displays or indicators to denote misfeed and/or supply replenishment conditions? How does one change paper size; is it console-selectable or automatic? Is there a microprocessor-supported self-diagnostic system?
- **Supply Replenishment** – Are paper, toner, developer, masters, or other expendables easy to replenish? What is the lifetime for a full load of toner and developer? How many copies can be generated from a full load of paper?
- **Special Features** – If there is an automatic document feeder, is it easy to use and does it handle originals carefully? What are the minimum and maximum original sizes accommodated by the feeder? If the copier provides reduction or enlargement capabilities, does it suit the necessary image size ratios for practical use in the company? Is duplexing performed manually or automatically? Modularity of features and accessories has become a selling point on many machines being marketed today. The ability to add options, when the need arises, adds useful life to a copier. Modular options may include feeders, sorters, large-capacity paper decks or cassettes, and even reduction, enlargement, and duplexing capabilities.

- **Physical Features** – What are the dimensions and weight of the copier? Are the electrical requirements standard, or does the machine require a three-prong plug or higher voltage? In case of a power overload, is the copier equipped with its own circuit breaker? Is the unit mobile? Is a stand/cabinet needed, and if so, what will it cost to purchase this option from the vendor? Does the copier have a work surface? What are the space requirements for the machine? Does the unit emit unpleasant fumes or odors? What is the noise level during operation and while on standby?
- **Reliability** – During the demonstration, did any of the following occur: paper jam or misfeed; over- or undertoning of the copy; damp or singed copies? How does one correct paper jams and imaging problems? What type of circuitry does the copier employ, standard or printed electronic panels/chips?

The time spent in the evaluation process is an investment in future productivity and cost efficiency. Obtaining a copier for actual hands-on testing is the best way to determine if a particular machine is suitable for the copy volume and the environment in which it will be placed. Actual experience combined with the other copier selection considerations – needs of the company, preferred technology, cost, and serviceability – should guarantee that the copying equipment obtained will fully meet expectations and anticipated demands.

### Selecting a Copier

#### COPIER USAGE SURVEY

Please answer the following questions regarding each trip to the copier. The results will be used to improve copying facilities within the company.

COPIER \_\_\_\_\_

USER NAME \_\_\_\_\_

USER DEPARTMENT \_\_\_\_\_

NUMBER OF ORIGINALS COPIED \_\_\_\_\_

#### NUMBER OF COPIES PER ORIGINAL:

Original 1 \_\_\_\_\_ Original 5 \_\_\_\_\_

Original 2 \_\_\_\_\_ Other Originals (List): \_\_\_\_\_

Original 3 \_\_\_\_\_

Original 4 \_\_\_\_\_

#### TYPE OF ORIGINALS (Check):

Typed Sheets ..... [ ] Magazine/Book Text....[ ]

Ledger..... [ ] Magazine/Book Text

Invoice..... [ ] & Photo.....[ ]

Check..... [ ] Other Types (Specify):\_\_\_\_\_

Drawing..... [ ] \_\_\_\_\_

Photo..... [ ]

#### USE OF ORIGINALS

#### SIZE OF COPIES (Check):

5 $\frac{1}{2}$ " x 8 $\frac{1}{2}$ "..... [ ] 11" x 17".....[ ]

8 $\frac{1}{2}$ " x 11"..... [ ] Other Sizes (Specify): \_\_\_\_\_

8 $\frac{1}{2}$ " x 14"..... [ ] \_\_\_\_\_

#### SPECIAL COPYING (Check):

Two-Sided Copies..... [ ] Labels.....[ ]

Multipage Sets..... [ ] Transparencies.....[ ]

Reduction Copies.....[ ] Other (Specify): \_\_\_\_\_

Duplicator Masters..... [ ] \_\_\_\_\_

Enlargement.....[ ] \_\_\_\_\_

#### INCONVENIENCES, LIMITATIONS, & SUGGESTIONS:

#### EXHIBIT 7

August 5, 1985

TO: Regional Sales Managers, Copy Products  
 Regional Service Managers, Copy Products  
 District Sales Managers, Copy Products  
 District Service Managers, Copy Products

FROM: Ed Ince, Manager CES Copy Products, 3F/B16,  
 KO, X42986 Mike Murray, General Manager,  
 Marketing Copy Products, 5F/B10, KO, X44882

SUBJECT: Copiers Purchased from Third Parties/Third  
 Party Service

As the number of Ektaprint copiers which are purchased by our customers increases, so will the number of copiers sold by customers to equipment brokers and other third

parties. Another area of interest as our population of sold copiers grows is the appearance of third party service organizations.

This letter is to familiarize you with our current business practices as well as provide you with specific guidelines for dealing with these situations.

#### Broker-Sold Equipment

As Kodak has no contractual relationship with brokers or any control over their use of equipment, we have no obligation to them regarding service of the copiers.

It is our desire, however, to offer EMA's on those units which can be brought up to Kodak's operating standards, meet Kodak's published site specifications and fall within the geographic locations where we provide service. The attached guidelines and price schedule will provide the details necessary for handling an Ektaprint copier purchased from a third party.

#### Third Party Service Organizations

These firms may approach either Field or Main Office personnel to purchase parts, tools or service literature or to be included in service training courses. The current business practice of Copy Products is to make all necessary parts, tools, training and service literature available at established prices to direct Copy Product customers of Kodak who want to service *their own copiers*. We do not honor requests from individuals or firms for resources necessary to service copiers owned by others. We have

also attached guidelines for your use in handling inquiries regarding third party service organizations.

It is important that we be consistent in our communication and implementation of the attached guidelines. If you do have any questions or if unusual situations develop, please call Lynn Brockmann, CES Copy Products, Service Planning, at extension 41446 for consultation before responding. Many thanks for your cooperation on these subjects.

/s/ Ed /s/ Mike

las  
Attachments

0930I

cc: Regional Field Service Managers  
Regional Operations Service Managers  
Zone Sales Operations Managers  
Equipment Service Center Managers  
Copy Products Management Council  
Copy Products Distribution Supervisors  
CESD Council  
R. Bern/R. Vukosic  
F. Booth  
B. Mathewson  
J. Secker

8/85

#### Guidelines for Handling EKTAPRINT Copiers Purchased from Third Parties

- When possible our communications should be directly with our prospective customers, not with third party vendors.
- No written or oral statements attesting to the condition of any copier about to be obtained by a broker or new user should be made by any Kodak representative.

- We are under no obligation to service a unit sold by a third party vendor, although we may choose to do so.
- If a prospective customer calls CESD requesting service on a unit not identified in SCAN, the DSR should set up a dummy customer record and dispatch an ESR to conduct a pre-installation inspection.
- We should only service a unit purchased through a third party vendor after inspecting the equipment and upgrading the unit to Kodak's standards.
- A flat rate pre-installation inspection fee (see attached price schedule) will be charged to the prospective customer through a special billing in SCAN to determine what changes to the equipment are required before agreeing to service the unit on a per-call or EMA basis. The pre-installation inspection fee covers labor, travel time and the cost of a starter kit which should be obtained by local CESD through local Distribution prior to the inspection.
- Time spent by ESR in pre-installation inspection activity should be reported against purpose code PRE. This will cause the call to be referred to the DOC for special billing. DSR in charge of billing should use attached rate schedule for reference when performing the special billing.
- A full installation is not required to perform the inspection as long as Image Quality and operational function can be evaluated.
- An estimate for the additional repair work should be generated by a Service Manager and presented to the prospective customer for approval. This estimate is non binding, therefore, the actual cost to perform the repairs and complete the installation may vary from the estimate.
- If local CESD determines that the equipment cannot be repaired locally because excessive labor or parts are required, the equipment should be sent to an ESC for remanufacturing.

- The actual repair work resulting from the inspection should be charged to the prospective customer (not a third party vendor) according to the current per-call rates through SCAN.
- Inspection and repair will only be performed if the prospective customer's site meets Kodak's published site specifications and is within an established Copy Products marketing/service area.
- The copier must be installed at the site of the prospective customer requesting the inspection, not at a third party vendors site.
- Local Distribution should be notified as soon as the location of a copier purchased from a third party vendor is known to either Marketing or CESD. A mainframe serial number, customer name and new address should be provided to Distribution.
- Local Distribution will then contact Operational Support in Rochester who will update Kodak Office systems with the new owner and location of the machine.
- If the prospective customer requests an EMA and the appropriate inspection and repair takes place by CESD . . .
  1. approval in writing by CESD is required.
  2. the CPSR should complete the EMA acceptance form.
  3. both documents should be forwarded by CESD or Marketing to Regional Distribution who will send them to Operational Support in Rochester.
- EMAs are not assignable (transferable to other customers).
- EMA availability (after inspection and necessary service or remanufacture) for the copier is calculated as follows:
- As indicated in the current CESD Price Book and Marketing price schedule, Kodak will make available

Equipment Maintenance Agreements (EMAs) for purchased equipment as listed below:

New equipment - Seven years from original warranty expiration date.

Remanufactured equipment - Seven years from original warranty expiration date.

Equipment Converted from Rental to Sale - Five years from date of original purchase or seven years minus rental time, whichever is greater.

Equipment from Per-Call Service - Remaining period of availability based on the original class of sale (new, remanufactured, Rental Into Sale). (See Remanufacturing Policy in the CESD Price Book or Marketing price schedule.)

- According to our *current* terms and conditions, if the copier is beyond the initial period of availability as determined by its date and method of purchase from Kodak, the copier can only be offered an EMA on an annual basis at the current EMA price plus 10% per year.
- If a broker or prospective customer requests that CESD prepare a unit for removal from the *original* customers site, we should comply with these requests based on the understanding that:
  1. The broker or prospective customer arrange and pay for the transportation of the equipment.
  2. The broker or prospective customer sign a waiver form stating that the broker or prospective customer, not Kodak, is responsible for any damage incurred during the move.
  3. The original customer will be charged a flat rate removal preparation fee (see attached price schedule) through a special billing in SCAN which will include the labor to package the machine, travel time, and the removal kit, which should be obtained by CESD through local Distribution.

- Removal kits will not be sold to any customer regardless of the origin of the copier.

#### Price Schedule For Equipment Sold By Third Parties\*

August, 1985

##### Pre-Installation Inspection Fee

|   |       |
|---|-------|
| Kodak Ektaprint 100/150 copier-duplicator                             | \$250 |
| Kodak Ektaprint 100P/100F/150P/150F/200F/225F copier-duplicator       | 375   |
| Kodak Ektaprint 100PS/100AF/150PS/150AF/200AF/225AF copier-duplicator | 495   |
| Kodak Ektaprint 250F duplicator                                       | 515   |
| Kodak Ektaprint 250AF duplicator                                      | 640   |
| Kodak Ektaprint 250AFB duplicator                                     | 740   |
| Kodak Ektaprint continuous forms feeder                               | 115   |

##### Removal Preparation Fee

|   |       |
|---|-------|
| Kodak Ektaprint 100/150 copier-duplicator                             | \$250 |
| Kodak Ektaprint 100P/100F/150P/150F/200F/225F copier-duplicator       | 375   |
| Kodak Ektaprint 100PS/100AF/150PS/150AF/200AF/225AF copier-duplicator | 495   |
| Kodak Ektaprint 250AF duplicator                                      | 515   |
| Kodak Ektaprint 250AF duplicator                                      | 640   |
| Kodak Ektaprint 250AFB duplicator                                     | 740   |
| Kodak Ektaprint continuous forms feeder                               | 115   |

\*to be included in the CESD Price Book in the near future.

These fees should be charged through a special billing in SCAN. If a customer number is not established at the time of dispatch, the call will go on hold and refer until the customer master is updated by Distribution and SCAN is updated with the new customer master.

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8/85

Guidelines for Responding to Inquiries Regarding  
Third Party Service Organizations

- Since we entered the copier marketplace in 1975, we have marketed our Ektaprint copiers, accessories, supplies, and equipment service directly to customers and have not designated dealers, distributors or resellers for those products and services. Kodak has developed tools, training programs, service publications, service parts and technical support for the sole purpose of providing high quality equipment service to our direct customers.
- It is not our business practice to provide training, publications, tools or service parts to individuals or firms for use in servicing Ektaprint copiers owned by others or obtained from sources other than Kodak.
- While we recognize the right of others to compete freely with us in the marketplace, we do not feel any obligation to assist potential competitors by providing training, publications, tools, service parts or technical support.

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**EXHIBIT 8**

**KODAK MEMO**  
**ADDENDUM TO AUGUST 5, 1985 LETTER**

October 18, 1985

TO:           Regional Sales Managers, Copy Products  
                Regional Service Managers, Copy Products  
                District Sales Managers, Copy Products  
                District Service Managers, Copy Products  
                Market Managers, Copy Products  
                Service Managers, Copy Products

FROM:        Ed Ince, Manager CES Copy Products, 3F/  
                B16, KO, X42986  
                Mike Murray, General Manager, Marketing  
                Copy Products, 5F/B10, KO, X44882

SUBJECT:      Guideline changes for equipment purchased  
                through third parties

In response to questions and suggestions that have arisen since our August 5 letter, this addendum will provide you with our current business practice as well as updated guidelines for dealing with KODAK EKTAPRINT Copier-Duplicators purchased from third parties. The business practice and guidelines provided on Third Party Service Organizations remain unchanged.

**BUSINESS PRACTICE**

As indicated in our August 5 letter, Kodak has no contractual relationship with brokers or any control over their use of the equipment. We also stated that we have no obligation to them regarding service of the copiers, however, it is our desire to offer EMA's on those units which can be brought up to Kodak's operating standards,

meet Kodak's published site specifications and fall within the geographic locations where we provide service.

We have made an adjustment to this business practice. Our revised business practice is to offer EMA contracts at the current EMA prices on units purchased from a broker (during the initial period of EMA availability) that have been previously covered by an EMA. It is understood that this only applies to units that meet Kodak's published site specifications and fall within the geographic locations where we provide service. Any work done to the unit to make it operational before offering an EMA will be absorbed by the receiving CESD District.

If a unit is per-call, Kodak will continue to provide service at the current per-call rates as long as they also meet site specs and fall within the geographic locations where we provide service. A pre-installation inspection is no longer required for per-call.

The attached guidelines will provide the details necessary for handling an Ektaprint copier purchased from a third party. As previously mentioned, it is extremely important that we be consistent in our communication and implementation of the attached guidelines. If you do have any questions or if unusual situations develop, please call Lynn Brockmann, CES Copy Products, Service Planning, at extension 41446 for consultation before responding. Many thanks for your cooperation on this subject.

/s/ Mike /s/ Ed

Attachments

- c: Regional Field Service Managers
- Regional Operations Service Managers
- Zone Sales Operations Managers
- Equipment Service Center Managers
- Copy Products Management Council
- Copy Products Distribution Supervisors
- CESD Council
- G. Booth
- B. Mathewson
- J. Secker
- R. Vukosic

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10/85

ADDENDUM TO 8/8/85 LETTER  
Updated Guidelines for Handling EKTAPRINT Copiers  
Purchased from Third Parties

- NO WRITTEN OR ORAL STATEMENTS ATTESTING TO THE CONDITION OF ANY COPIER ABOUT TO BE OBTAINED BY A BROKER OR NEW USER SHOULD BE MADE BY ANY KODAK REPRESENTATIVE.
- When possible our communications should be directly with our prospective customers, not with third party vendors.
- If a prospective customer calls CESD requesting service on a unit not identified in SCAN, a Service Manager should evaluate the situation based on the conditions outlined in this package and dispatch an ESR accordingly:
- When a prospective customer purchases a KODAK EKTAPRINT Copier-Duplicator from a third party, they will usually fall into one of the following three categories, each having unique guidelines for Kodak field personnel to follow:

EMA TO EMA

If the unit has been previously covered by an EMA, and the prospective customer is requesting that their unit also be covered by an EMA:

1. A pre-installation inspection is required to determine if any *transportation or storage* damage has occurred. This inspection will be charged to the prospective customer through a special billing in SCAN. The pre-installation inspection fee covers labor, travel time and the cost of a starter kit which should be obtained by local CESD through local Distribution prior to the inspection.

Time spent by ESR in pre-installation inspection activity should be reported against purpose code PRE. This will cause the call to be referred to the DOC for special billing. DSR in charge of billing should use the rate schedule from the 8/5/85 letter for reference when performing the special billing. (rate schedule to be published in CESD Price Book in the near future)

2. If transportation or storage damage is detected, and CESD can repair the damage, the customer will be charged at per-call rates. An option the customer has is to report damage to the broker who may file a claim with the responsible carrier. If the unit has undergone extensive damage during transit or storage, and CESD is unable to repair the equipment, an EMA should not be offered, and the customer will have to resolve the issue with the broker.

If no transportation or storage damage is detected, there should be little or no work required to make the unit operational. Therefore, we will offer the prospective customer an EMA at the current EMA prices (as long

as they are still within their initial period of EMA availability) provided that:

- a. The unit was relocated to the current site no more than 60 days since it was removed from the last customer's site.
- b. There has been no usage on the equipment since it was removed from the previous customer's site (compare current meter reading to removal meter reading).
- c. There has been no unusual damage (as defined by Kodak) to the equipment.

If the above three conditions are not met, CESD will charge the customer per-call rates to bring the unit up to Kodak's operating standards.

If the unit is past the initial period of EMA availability, an EMA extension may be offered on an annual basis after inspection and remanufacturing (remanufacturing is only performed if deemed necessary by Kodak), at customer expense. Cost will be the current EMA cost plus 10 percent for each year past initial availability.

PER-CALL TO PER-CALL

If a unit was serviced by Per-call service and the prospective customer wants to continue service coverage as a Class D customer:

1. A pre-installation inspection is not required.
2. Business as usual for a Class D customer. Charge the customer for parts and labor according to our current per-call rates.

PER-CALL TO EMA

If a unit was serviced under Per-call and the prospective customer requests EMA coverage:

Business as usual for conversion from Per-call to EMA. Follow the current terms and conditions outlined in the Marketing Price Schedule, and/or CESD Price Book.

The following guidelines apply to any unit purchased from a third party vendor:

- The prospective customer's site must meet Kodak's published site specifications and is within an established Copy Products marketing/service area.
- The copier must be installed at the site of the prospective customer requesting the inspection, not at a third party vendor's site.
- Local Distribution should be notified as soon as the location of a copier purchased from a third party vendor is known to either Marketing or CESD. A mainframe serial number, customer name and new address should be provided to Distribution.
- Local Distribution will then contact Operational Support in Rochester who will update Kodak Office systems with the new owner and location of the machine.
- If a broker or prospective customer requests that CESD prepare a unit for removal from the *original* customer's site, follow the guidelines outlined in the 8/5/85 letter.

- Removal kits will not be sold to any customer regardless of the origin of the copier.

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